No. 15457

United States Court of Appeals

for the Ninth Circuit

SECURITIES AND EXCHANGE COMMISSION,

Appellant,

vs.

INSURANCE SECURITIES INCORPORATED, TRUST FUND SPONSORED BY INSURANCE SECURITIES, INCORPORATED, ABE P. LEACH, OSSIAN E. CARR, ARTHUR J. LONERGAN, ROY A. HAIGHT and LELAND M. KAISER, as Attorney and Proxy for Investors of Trust Fund,

Appellees.

Transcript of Record

Appeal from the United States District Court for the Northern District of California

Southern Division.

Phillips & Van Orden Co., 870 Brannan Street, San Francisco, Calif.—4-26-57

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

THOMAS G. MEEKER,
General Counsel;

AARON LEVY,
Special Counsel;

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Washington 25, D. C.;

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ARTHUR E. PENNEKAMP,
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MR. MOSES LASKEY,
BROBECK, PHLEGER AND HARRISON,
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San Francisco, California;

MR. PHILIP S. EHRLICH,
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San Francisco, California;

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SULLIVAN & CROMWELL,
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Oakland, California,

For Appellees.

United States District Court for the Northern District of California, Southern Division

Civil Action No. 35764

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

INSURANCE SECURITIES INCORPORATED, TRUST FUND SPONSORED BY INSURANCE SECURITIES, INCORPORATED, ABE P. LEACH, OSSIAN E. CARR, ARTHUR J. LONERGAN, ROY A. HAIGHT and LELAND M. KAISER, as Attorney and Proxy for Investors of Trust Fund,

Defendants.

COMPLAINT

It appearing that the defendant individuals named hereinafter have engaged, and may continue to engage, in acts and practices which constitute gross misconduct and gross abuse of trust within the meaning of Section 36 of the Investment Company Act of 1940 ("the Act"), 15 U.S.C. 80a—35; and it appearing further that said individuals and others have engaged, and will continue to engage, in acts and practices in violation of the proxy regulations under Rule N-20A-1, promulgated under Section 20(a) of the Act, 15 U.S.C. 80a—20(a); the Securities and Exchange Commission ("the Commission") brings this action to enjoin such acts

and practices and further violations of the Act and the Commission's Rules and Regulations thereunder, and for other appropriate and equitable relief.

This action is brought before this Court pursuant to Sections 42(e) and 44 of the Act, 15 U.S.C. 80a—41(e) and 43.

First Cause of Action

1. Insurance Securities Incorporated ("Insurance Securities") was organized on March 9, 1938, under the laws of California. Its principal business office is located at 2030 Franklin Street, Oakland, California.

2. The following individuals defendants have been and continue to act as directors, and in addition hold the following offices of Insurance Securities:

Name	Office
Abe P. Leach	President
Ossian E. Carr	Vice-President
Arthur J. Lonergan	Vice-President
Roy A. Haight	Secretary

These individuals have been directors since 1938. They are also members of the Executive Committee of Insurance Securities. Their principal business office is: 2030 Franklin Street, Oakland 12, California.

3. Leland M. Kaiser has been a director and vice-president of Insurance Securities. He is made

a party defendant herein in his capacity as proxy and attorney on behalf of investors of a "Trust Fund" as hereinafter more fully described. His business address is Russ Building, San Francisco 4, California.

4. Insurance Securities is the Sponsor, Depositor, Investment Adviser and Principal Underwriter of a "Trust Fund." Insurance Securities has no other business.

5. The Trust Fund was organized under California law under the terms of a Trust Agreement dated July 1, 1938, and as subsequently amended. The principal office of the Trust Fund is at 2030 Franklin Street, Oakland 12, California.

6. The Trust Fund is an open-end diversified management company within the meaning of Sections 4 and 5 of the Act, 15 U.S.C. 80a—4 and 5, and is registered as such with the Commission pursuant to Section 8(b) of the Act, 15 U.S.C. 80a—8(b).

7. The Trust Fund derives its capital funds from the continuous offerings to public investors of Participation Agreements. Such participations are sold either under a single payment plan involving a single investment of $1,000 or more, or under a periodic payment plan with monthly payments of $10 or more, and a $1,200 minimum aggregate covering a 10-year period. The net receipts are invested by the Trust Fund in stocks of various insurance companies. As of December 31, 1955, net assets of

the Trust Fund amounted to approximately $215,000,000.

8. The Trust Fund has no officers or directors of its own. Management functions are discharged by Insurance Securities as Sponsor, Investment Adviser of said Trust Fund.

9. Insurance Securities receives a "creation fee," or sales load, for the sale of Participation Agreements. It receives also a fee for administering the Trust Fund, and a management and investment supervisory fee for investment advice. During the fiscal years ended June 30, 1953, 1954 and 1955, Insurance Securities received as follows:

	1953	1954	1955
Creation Fees	$1,847,948	$2,960,222	$4,354,300
Administrative Fees	165,432	224,452	276,724
Advisory Fees	97,687	134,009	166,357
Other	710	884	1,126
Total	$2,111,777	$3,319,567	$4,798,507

10. The investors in the Trust Fund have no general voting rights, except in the particular circumstances specified in the Trust Agreement. Among other things, said Trust Agreement provides, as required by the Act, that the Trust Fund's advisory and principal underwriting contracts must be approved annually by a vote of investors representing a majority of investment units of the Trust Fund.

11. Under the Trust Agreement, as also required by the Act, an assignment of the contract

to serve as Investment Adviser for the Trust Fund automatically terminates such contracts. The Trust Agreement also provides, as further required by the Act, that an assignment of the contract to engage in the Principal Underwriting of the securities of the Trust Fund automatically terminates the contract. Section 2(a)(4) of the Act, 15 U.S.C. 80a—2(a)(4), defines the term "assignment" to include

> "any direct or indirect transfer * * * of a contract * * * by the assignor, or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor."

12. On or about January 1, 1956, and for some years prior thereto Insurance Securities had outstanding 166 shares of capital stock, $100 par value. This stock was closely held, of which 72% was held in the aggregate by the individual defendants, Leach, Carr, Lonergan and Haight (hereinafter referred to as the "director-defendants").

13. On June 29, 1956, the outstanding capital stock of Insurance Securities was split into 166,000 shares, 10c par value. For purposes of convenience, the amount held by each of the persons named hereafter and the amount of such stock sold will be given in terms of their equivalents after June 29th.

14. On January 1, 1956, each of the director-defendants owned 30,000 shares, or 18% of the 166,000 shares outstanding.

15. The balance of the stock was held by five individuals: Elwood H. Smith, 26,000 shares, or 16%

of the total outstanding; Hazel E. Plant, 15,000 shares, or 9% of the total outstanding; Donald B. Rice (a director), 1,000 shares, or 0.6% of the total outstanding; and McConnell and W. Smith, 2,000 shares each, or 1.2% of the total outstanding. It is represented to the Commission that Rice bought his shares in January, 1955, and that McConnell and W. Smith acquired their shares by gift in December, 1955.

16. Upon information and belief, on or about February 1, 1956, the director-defendants either alone or in concert with others, embarked upon a plan to sell their stock interests to a small number of purchasers, affiliated among each other through stock ownership and otherwise. Most of said sales were arranged through Kaiser & Co., investment bankers in San Francisco, California. Leland M. Kaiser, a member of the firm, is now a director and vice-president of Insurance Securities. He has also been designated as one of the Attorneys and Proxies for the investors at the forthcoming meeting of the investors of the Trust Fund, the purpose of said meeting is to vote upon matters more fully described below. It is contemplated that Leland M. Kaiser will succeed A. P. Leach as president of Insurance Securities.

17. The total shares of the capital stock of Insurance Securities sold to the purchasers between February 1, 1956, and July 1, 1956, inclusive, amounted to 88,000 shares, or 53% of the shares outstanding.

18. During the same period, the director-defendants sold to the purchasers the following number of shares:

Leach	29,000 shares
Carr	13,000 shares
Lonergan	13,000 shares
Haight	13,000 shares

By reason of the aforesaid transfers, the director-defendants reduced their stock interests in Insurance Securities from 72% to 31.2%. The amount thus transferred to the purchasing group amounted to about 40.8% of the total outstanding. The balance of approximately 13% were purchased from the other individual holders except Rice.

19. The price paid for the stock was $50 per share. The balance sheet as of June 30, 1956, for Insurance Securities, attached hereto as Exhibit A, shows the stockholders' equity in this company to be $300,489, or $1.81 per share. The aggregate price for the total shares sold was approximately $4,240,720 in excess of their net book value.

20. The price of $50 per share paid, and agreed to be paid, to the sellers does not represent the real and actual value of the Insurance Securities shares. The payment of 25 times the net asset value represented no payment for any asset or assets owned by Insurance Securities. Ostensibly and necessarily, the purchase price reflected the value of the perquisites and emoluments which Insurance Securities derives from the substantial fees paid, and to be

paid, by the Trust Fund to Insurance Securities under the Investment Advisory and Principal Underwriting contracts, which under the Trust Agreement and under the Act, as noted in paragraph 11, supra, are not assignable. The value attached to said contracts are an asset of the Trust Fund, and in law and equity is preserved for the benefit of such Trust Fund.

21. Insurance Securities, by virtue of its pervasive management position with respect to the Trust Fund, and its directors and officers, including the director-defendants, stand in a fiduciary relationship to said Trust Fund, and in law and equity cannot profit on trading on such fiduciary relationship. The substantial profits realized and to be realized, by the director-defendants, as aforesaid, represent profits which equitably belong to the Trust Fund but which, upon information and belief, said director-defendants intend to keep, for their own account and benefit.

22. Upon information and belief, in further pursuit of their unlawful conduct, the directors of Insurance Securities, including the director-defendants, commenced solicitation of proxies for a meeting of investors of the Trust Fund. Said solicitation commenced shortly after the stock transactions hereinabove described.

23. The object of the proxy solicitation and the meeting of investors is set forth in the proxy soliciting material attached hereto as Exhibit B.

24. Among other things, the object of the meeting is to reinstate or to confirm the Investment Advisory and Principal Underwriting contracts which the Commission believes have been terminated by reason of the transfer of control, as described hereinabove, and which it is stated in the proxy soliciting material may have such effect. By obtaining reinstatement and confirmation of said contracts, the purchasers of the controlling stock interest in Insurance Securities would be assured of the benefits of said contracts, for which they paid substantial sums, and the director-defendants would be assured of their inequitable profits as a consequence of the sale of such contracts.

25. By reason of the foregoing, the director-defendants are guilty of "gross misconduct" and "gross abuse of trust" within the meaning of Section 36 of the Act.

Second Cause of Action

26. Plaintiff alleges and incorporates by reference matters set forth in paragraphs 1 to 25, inclusive.

27. On or about July 17, 1956, Insurance Securities caused to be mailed to investors of the Trust Fund proxy soliciting material and a form of proxy for the purpose of a meeting of investors of the Trust Fund, scheduled for Wednesday, August 15, 1956, at 10:00 a.m. Pacific Daylight Saving Time. The solicitation is being made by Insurance Securities as "Sponsor and Manager, and as

Investment Advisor and Principal Underwriter, of the Trust Fund." The cost of the solicitation is to be borne by Insurance Securities.

28. The purpose of the meeting is to vote on several proposals devised and formulated by Insurance Securities. Among these is a proposal to reinstate or confirm by a majority vote of investors the Investment Advisory and Principal Underwriting contracts. In the proxy statement it is alleged that the "company is advised" that the "change in majority ownership" of Insurance Securities stock "may be considered an assignment" of said contracts by the terms of the contracts and under the Act. The Commission alleges that under the facts and circumstances here presented such contracts have been terminated.

29. The aforesaid proxy solicitation material is false and misleading and in violation of Section 20(a) of the Act and Rule N-20A-1 (17 C.F.R. 270. 20a-1), which incorporates by reference and makes applicable to registered investment companies the Commission's proxy rules set forth in Rule X-14A (17 C.F.R. 240.14).

30. The proxy soliciting material states that the company is advised, presumably by its counsel, that the change in majority ownership of the Insurance Securities stock may have the technical effect of terminating the Investment Advisory and the Principal Underwriting contracts, when in effect the company has also been advised by the staff of the

Commission that, on the facts presented, the change in majority ownership may also involve gross misconduct and gross abuse of trust under Section 36 of the Act.

31. The proxy solicitation material is also misleading in that it omits to state the price paid to the director-defendants for their stock of Insurance Securities.

32. Insurance Securities and its directors were, and are, under an obligation to disclose the foregoing facts and circumstances, in the light of which an investor may determine and vote on whether or not to reinstate the Investment Advisory and Principal Underwriting contracts for which the new controlling group and persons have paid substantial amounts of money.

33. Another proposal to be submitted to the investors of the Trust Fund for their vote and approval is the setting up of a board of trustees for the Trust Fund to be known as a "Board of Directors" and the election on staggered terms of such board of directors. Among the nominees for this board of directors are Leach and Haight, two of the individual defendants who are now directors of Insurance Securities.

34. This Court has jurisdiction to enjoin the holding of the proposed meeting of the investors of the Trust Fund, to the extent of restraining a vote on the aforesaid proposals, and thus prevent exer-

cise of proxies procured in violation of the Act and the Commission's Rules and Regulations thereunder.

Wherefore, plaintiff requests that a judgment be entered by this Court granting

(1) A permanent injunction enjoining the individual defendants from serving as officers and directors of Insurance Securities Incorporated, and from serving and acting as directors of the proposed board of directors of the Trust Fund;

(2) A permanent injunction restraining all of the defendants, their agents, employees and nominees, from voting proxies, obtained pursuant to the proxy solicitation material circulated by Insurance Securities Incorporated, at the forthcoming meeting of investors of Trust Fund to be held on August 15, 1956, or at any adjournment or adjournments thereof;

(3) Pending a final determination of this action, and subject to further order of this Court, that the defendants be temporarily enjoined from voting the proxies at the forthcoming meeting of investors of the Trust Fund scheduled for August 15, 1956, or any adjournment or adjournments thereof, in respect of:

(a) The proposed reinstatement of the Investment Advisory and Principal Underwriting contracts;

(b) The setting up of a board of directors for the Trust Fund and the election of such directors scheduled at the same meeting;

(4) Pending final determination of this action, and until further order of this Court, that the amount of fees to be charged by Insurance Securities Incorporated for its Investment Advisory and Principal Underwriting services in excess of actual costs or expenses thereof be segregated and maintained in a separate account;

(5) That an accounting be rendered by the director-defendants in this cause for the inequitable and wrongful profits realized, and to be realized, as a consequence of the sale of their stock of Insurance Securities Incorporated;

(6) Such other, further and different relief as this Court may deem just and proper.

/s/ THOMAS G. MEEKER,
General Counsel.

/s/ AARON LEVY,

/s/ E. KENNAMER,
Attorneys, Securities and
Exchange Commission.

Dated: August 10, 1956.

EXHIBIT A

Insurance Securities Incorporated

Balance Sheet—June 30, 1956

Assets

Current Assets:		
Cash	$533,379.60	
Investment in participating agreements—at liquidating value—adjusted cost basis $266,542.00	331,204.93	
Miscellaneous receivables	8,097.65	
Prepaid expenses	36,188.58	
Total current assets		$ 908,870.76
Notes Receivable		43,070.00
Fixed Assets:		
Office furniture and equipment	$238,298.38	
Less accumulated depreciation	68,604.50	
Remainder	$169,693.88	
Leasehold improvements—Unamortized balance	5,480.15	
Total fixed assets		175,174.03
Total assets		$1,127,114.79

Liabilities and Stockholders' Equity

Current Liabilities:		
Accounts payable	$ 5,961.22	
Accrued salaries	24,734.75	
Payroll taxes collected and accrued	19,995.34	
Federal taxes on income	605,630.24	
Overpayments made by investors	474.01	
Dividends declared to stockholders	149,400.00	
Advance rent received	4,265.00	
Total current liabilities		$ 810,460.56

Provision for Federal Income Tax on Unrealized Appreciation of Investment in Participating Agreements			$ 16,165.73
Stockholders' Equity:			
Capital stock* — authorized 500,000 shares—par value ten cents per share; issued and outstanding 166,000 shares		$ 16,600.00	
Capital received for shares in excess of par value		14,400.00	
Retained earnings		220,991.30	
Subtotal		$251,991.30	
Unrealized appreciation of participating agreements	$64,662.93		
Less applicable federal income tax which would accrue	16,165.73	48,497.20	
Stockholders equity			300,488.50
Total liabilities and stockholders' equity			$1,127,114.79

This Statement is Unaudited.

*Effective June 29, 1956, par value of shares reduced to 10c and stock split 1,000 shares for each share of $100.00 par value stock.

EXHIBIT B

"Definitive Copy"

[Handwritten]: 8 11-87-2—Orig.

Insurance Securities Incorporated
Trust Fund

Executive Offices: 2030 Franklin Street
Oakland 12, California—Glencourt 1-2442

Roy A. Haight, Secretary

July 17, 1956.

To the Investors Holding Participating Agreements in the Trust Fund

Gentlemen:

In connection with action proposed upon certain amendments to the Amended Trust Agreement under which the Participating Agreements are outstanding, you will find enclosed herewith the following:

(1) Formal Notice of Meeting.

(2) Notice of Proposed Supplemental Agreements with copy of the Proposed Supplemental Trust Agreement attached thereto.

(3) Proxy Statement covering the matters referred to herein.

(4) Proxy (ballot).

The amendments to be acted upon involve (a) creation of a Board of Trustees or Directors for the Fund, to be elected by the Investors, to whom Insurance Securities Incorporated will be responsible in its Investment Advisory and Underwriting functions; (b) enlargement of the list of eligible companies available for the investment of the Trust Funds; (c) simplification of procedures by which the investor designates or changes a beneficiary or assigns a Participating Agreement, and (d) reinstatement of the Investment Advisory and Principal Underwriting Contracts between Insurance Securities Incorporated and the Trust Fund in precisely the present form, except as affected by the creation of a Board of Directors of the Fund.

The Proxy Statement and Notice of Proposed Supplemental Agreement set forth in more detail the matters to be acted upon and the reasons therefor, and the Proxy which is enclosed provides appropriate spaces in which you may direct the manner in which your vote is to be cast.

There is to be no relaxation of the present limitations relating to the qualifications of a company for investment of the trust funds in its securities. However, because of the size and growth of the Fund, it is believed desirable that a large market of eligible securities be maintained so that available funds may always be invested to the greatest advantage of the investors. As new companies qualify under the limitations contained in our Articles, and become desirable investment for Trust Funds, we

feel that such companies should be made eligible for Trust portfolio investment, and it is for this reason that the additional securities are presented for your approval. This is in accordance with our past procedures; as you will recall during 1954 you approved the addition of 25 companies and deleted 5 from the eligible list.

The simplifications of procedures are designed to modify requirements of the Company relative to the assignment of Participating Agreements and designations of beneficiaries thereunder. Certain of the present requirements, particularly the requirements of a marital affidavit upon assignment or change of beneficiary, have proved cumbersome and the Company is taking these steps to improve and simplify such procedures.

It is believed that the provision creating a Board of Trustees or Directors elected by the investors and directly responsible to them is a desirable change in that it places the responsibility for management upon persons who have been chosen by the investors themselves. At the same time, all the advantages of the relationship with Insurance Securities Incorporated are retained through the Investment Advisory and Underwriting Contract.

As will be noted in the Proxy Statement, Mr. Leach, who is now reaching his eighty-third birthday, is relinquishing his position as President of the Company and accepting in its place a somewhat less active role as Chairman of the Board of Directors

of the Company. At the same time, however, he is being proposed as a member of the Board of Trustees of the Fund.

In connection with Mr. Leach's semi-retirement, he is selling substantially all of his stock of the Company to other stockholders. As explained in the Proxy Statement, this sale, together with other sales of stock made in the past, may have the technical effect of terminating the Investment Advisory and Underwriting Contracts of the Company under the Trust Agreement. Therefore, these contracts are submitted to the investors for reinstatement.

The provisions governing the investment of available funds, and the policies of the Company as set forth in the Trust Agreement will, of course, not be changed or affected by the transfer of ownership. Changes of such character, as well as changes in securities eligible for investment of trust funds will, in any event, require consent of a majority of the holders of Participating Agreements.

May we urge that these proceedings are important, both to the Company and to yourself, and that you indicate your desires without delay. The entire expense of this solicitation is being borne by the Company, without cost to the Investors. To remove any confusion with regard to the information shown in the Proxy Statement relating to the Officers and Directors of Insurance Securities Incorporated, we may state that none of the compensation shown therein is paid directly by the Trust Fund to such

persons. The sums received by the Officers and the Directors of this Company are paid by the Company out of the fees allowed the Company as set forth in the Statement and are not in addition thereto.

Your prompt co-operation in this matter will be greatly appreciated.

Your very truly,

/s/ R. A. HAIGHT,
Secretary, Insurance
Securities Incorporated.

[Stamped]: Received July 16, 1956, U.S.S.E.C.

"Definitive Copy"

Insurance Securities Incorporated

Proxy Statement

To the Investors Holding Participating Agreements in the Trust Fund:

Herewith you will find notice of Proposed Supplemental Agreement which contains certain proposed amendments to the Amended Trust Agreement between Insurance Securities Incorporated, Pacific National Bank of San Francisco, Trustee, and the Investors, together with a Notice of Meeting of Investors to be held at The Bowl, Hotel Leamington, 19th and Franklin Streets, Oakland, California, and a form of Proxy. It is important that you sign, date and return this Proxy now.

Voting of Proxies

The Participating Agreements represented by all properly executed Proxies received in time for the meeting will be voted. Where an Investor has specified a choice by marking the ballot provided in the Proxy, the Participating Agreements represented by that Proxy will be voted in accordance with the specification made. If no specification is made, the investment units represented by such Participating Agreements will be voted in favor of the proposals referred to in the Notice of Meeting. Discretionary authority is granted in the Proxy to vote on any matters, other than those referred to in the Notice of Meeting, which may properly come before the meeting or any adjournment thereof. The management of Insurance Securities Incorporated knows of no such matters which are to be presented for action at the meeting.

The giving of the enclosed form of Proxy does not preclude the right to vote in person should you so desire. The Proxy may be revoked before it is exercised but will continue in full force and effect until an instrument revoking it, or a duly executed Proxy bearing a later date is filed with the Secretary of the Corporation.

Outstanding Participating Agreements

The aggregate amount of all Participating Agreements issued and outstanding as of June 30, 1956, was $223,150,664, representing an aggregate equity in the Trust Fund of 94,074,860.562 investment

units. Investors of record as at the close of business on July 16, 1956, will be entitled to vote at said meeting.

Solicitation and Cost Thereof

This solicitation is being made by Insurance Securities Incorporated (the "Company") as the Sponsor and Manager, and as Investment Advisor and Principal Underwriter, of the Trust Fund. The cost of preparing, assembling and mailing all matter connected with this solicitation will be borne by Insurance Securities Incorporated.

Proposed Amendments to the Amended Trust Agreement

The amendments proposed to be made are set forth in full in the Notice of Proposed Supplemental Agreement, to which reference is made for a complete statement of the terms thereof. If such amendments are approved at the meeting they will become effective, not earlier than 60 days from the date hereof nor more than 10 days thereafter, upon the taking of certain formal steps required in the Amended Trust Agreement. The more important aspects of, and the purpose of, each of the proposed amendments may be briefly described as follows:

As to the First Proposed Amendment:

In order that the Trust Fund may be managed by a Board elected by the Investors and directly responsible to them, it is proposed that the Trust

Agreement be amended so as to provide for a board of trustees to be known as the "Board of Directors" which would be entrusted with the management of the business and affairs of the Trust. Duties heretofore performed by the Company would thereafter be performed by it, subject to the control, supervision and direction of the Board of Directors. In addition, certain functions delegated to the Trustee would thereafter be performed subject to the direction of the Board of Directors.

It is proposed that the Board of Directors of the Trust consist of Mr. Abe P. Leach, Mr. Leland M. Kaiser, Mr. Roy A. Haight, Mr. Brayton Wilbur, Mr. Howard Ainsworth, Judge A. J. Woolsey and Mr. E. R. Leach, all of whom are presently Directors of Insurance Securities Incorporated. Mr. Abe Leach and Mr. Kaiser would each serve for an initial term of five years, Mr. Wilbur for a term of four years, Mr. Haight and Mr. E. R. Leach for terms of three years and Judge Woolsey and Mr. Ainsworth for terms of two years and one year, respectively. Upon the expiration of the term of each Director, a successor would be elected who would then hold office for five years. Messrs. Wilbur, Ainsworth, Woolsey, and E. R. Leach will resign as Directors of the Company upon election as Directors of the Fund.

Under the proposed amendment, the Directors would each receive as compensation an amount equal to the fees paid by the Company to each member of its Board of Directors. Such compensation will be

deducted, however, from the amounts payable to Insurance Securities Incorporated under the terms of the Investment Advisory and Principal Underwriting contracts and hence will not add any additional expense to be charged against the Trust Fund.

No Director shall be liable for any action which he may in good faith, or on the advice of counsel, take or refrain from taking in connection with his duties.

One effect of the proposed amendment will be that a majority of the members of the Board of Directors who are not parties to such contracts or otherwise affiliated with the Company, as well as the Investors, will have the power to approve, annually, the contract between Insurance Securities Incorporated, Pacific National Bank of San Francisco, and the Investors concerning matters of Investment Advising and Principal Underwriting.

As to the Second Proposed Amendment:

The additional companies named in the amendment, approval of which is now sought, are, in the judgment of the Company, all desirable companies. Each of these companies has been in operation for more than fifteen years; each has paid dividends for each of the last preceding five (5) years or more and each has assets of more than seven million dollars.

In addition, by increasing the number of insurance companies, shares of the capital stock of which

may be purchased, a larger number of qualified companies will be afforded from which selection for purchase may be made, with due regard to the various elements of desirability, such as the relation of price to asset value, yield, management, and previous performance. Furthermore, the trend in the insurance industry is toward consolidation. It is possible, if not probable, that through consolidation the number of companies, the shares of the capital stock of which are eligible for investment, may be reduced below the number now eligible.

The list of companies the shares of capital stock of which are eligible for investment, as it presently exists, contains the names of three companies which should be deleted, namely, American Alliance Ins. Co., Automobile Insurance Co. of Hartford, Conn., and Central Surety and Insurance Corporation of Kansas City, Mo. These companies have been acquired by other companies and their capital stock is no longer available. Your attention is also called to the fact that the company designated as Peerless Casualty Company in the list has changed its name and is now known as Peerless Insurance Company. The portfolio has been revised to reflect such change in name.

As to the Third Proposed Amendment:

Designation of a beneficiary (other than spouse or estate), or a change of beneficiary, by a married Investor now requires the consent of the spouse, together with an affidavit of marital status. The pro-

visions are applicable without regard to the separate or community character of the investment and, as a result, have caused a great deal of concern to certain Investors where separate property was involved; and they have occasionally proved an unnecessary hardship upon the Investor. The amendment is designed to eliminate these requirements.

As to the Fourth Proposed Amendment:

An assignment of a Participating Agreement requires the consent of the spouse of a married Investor and the submission of an affidavit of marital status. Securing such documents has often proven to be an inconvenience to, and a hardship upon the Investor, and is in excess of the requirements of ordinary business practice, particularly in matters involving assignment by way of collateral security. Here, too, the requirements disregard the separate or community character of the investment. The amendment is designed to eliminate these requirements.

As to the Fifth and Sixth Proposed Amendments:

The Amended Trust Agreement contains all of the terms of a contract between the owners of the Trust Fund and Insurance Securities Incorporated concerning matters of Investment Advising and Principal Underwriting.

The rights and obligations of the Company in these regards are, briefly, as follows:

1. Investment Advising

(a) The Company shall order the securities and the amount or number thereof which shall be purchased or sold.

(b) Neither the Board of Directors of Company nor any officer or member thereof, shall directly or indirectly purchase or otherwise acquire from the Trust property any stocks or other securities acquired by the Company or Trustee for or on behalf of the Investors nor shall there be purchased by the Company for the Trust, directly or indirectly, any stocks or other securities owned by any officer, director or stockholder of the Company, or in which they or any of them have any interest.

(c) The Company shall receive no compensation for its services as said Investment Adviser as said term is defined by and in the Investment Company Act of 1940, except insofar as a compensation therefor may be included in the Investment Supervision and Management fee and Administrative fee. Said fees are as follows for each $1,200.00 paid or agreed to be paid, per month:

	Accumulative Plan	Single Payment Plan
Administrative Fee	.28	.18
Investment Supervision and Management	.10	.20
Total	.38	.38

Except that, starting with Participating Agreements issued after August 1, 1949, the total of said

fees deducted, including the Trustee's Fee, in no case shall be more than 1/12 of 1% of the net payments invested, and in any case where the fees charged shall be less than above, the actual fee as charged shall be in the same proportion and any excess shall be waived without right of subsequent reimbursement or payment thereof.

(d) The right and obligation of Company to act as Investment Adviser shall continue until terminated, provided, however, that it shall continue for a period of more than two years from its effective date only so long as such continuance is specifically approved at least annually by the Board of Directors or by vote of the holders of a majority of investment units of all outstanding Participating Agreements.

(e) The right and obligation of Company to act as such Investment Adviser may be terminated at any time, without the payment of any penalty, by the Board of Directors or by the vote of the holders of a majority of the investment units of the outstanding Participating Agreements on not more than sixty days' written notice to Company.

(f) Any assignment by Company of its rights to act as Investment Adviser of the Trust Fund shall automatically terminate and end its rights to so act from and after the date of such assignment, and no rights or privileges shall be conveyed by virtue of said assignment.

2. Principal Underwriting

(a) Company as agent of the Trust Fund has the right to sell Participating Agreements issued under the provisions of the Trust Agreement.

(b) All subscriptions for the issuance of Participating Agreements shall be in such form or forms as Trustee and Company may from time to time prescribe.

(c) When such subscription agreement is signed and delivered by Investor to Company or its agent, it shall be accompanied by the first payment provided for therein, which payment shall be known as the "Initial Payment," which may be in any amount up to the full amount agreed to be paid, but shall not be less than $120.00 upon each unit of $1,200.00. The remainder of the face amount of the Participating Agreement to be issued pursuant to a subscription therefor under the Accumulative Plan shall be payable in equal installments, each payable on such date as the subscriber shall designate in such subscription, until the total face amount of the Agreement is paid. Investor may pay any payments in advance.

(d) Company has the right to reject any subscription made to it for the issue of an Agreement or of Agreements.

(e) Each of the Investors authorizes and directs Company to charge to Investor's account and to deduct a Creation Fee or Sales Load in a sum equal to 8.85 per cent (8.85%) of the amount paid on each

Single Payment Participating Agreement, and 8.85 per cent (8.85%) of the amount agreed to be paid on each Accumulative Plan Participating Agreement. In the case of the Accumulative Plan, however, the Creation Fee or Sales Load shall be deducted as follows: 7.48 per cent (7.48%) of the required first twelve monthly payments or their equivalent, and nine per cent (9%) on the balance of the aggregate amount agreed to be paid when, as, and if said payments are made.

(f) The right and obligation of Company to act as Principal Underwriter to offer for sale, sell or deliver after sale any security issued by it shall continue until terminated; provided, however, it shall continue for a period more than two years from its effective date only so long as such continuance is specifically approved at least annually by the Board of Directors or by vote of the holders of a majority of investment units of all outstanding Participating Agreements.

(g) Any assignment of its rights to act as Principal Underwriter of such securities shall automatically terminate and end its right to so act from and after the date of such assignment, and no rights or privileges shall be conveyed by virtue of said assignment.

Present Investment Adviser and Underwriter

Insurance Securities Incorporated is now acting and has acted as Investment Adviser, in determining which of the eligible Insurance Stocks were to

be purchased and which of the portfolio securities were to be sold, since the inception of the Trust Fund and also as Principal Underwriter of the Participating Agreements issued since the inception of the Trust Fund.

Mr. Leach now proposes to retire as the chief executive officer of the Company and will assume the less active role of Chairman of the Board. At the same time he advises us that he is selling substantially all of the balance of the stock of the Company which he holds, amounting to 10.24% of the stock of the Company, to other stockholders of the Company. Upon the consummation of this sale, the old stockholders of the Company, being those who have held stock for over 16 years, will hold less than a majority of its shares, to be precise 45.78% thereof, and the Company is advised that this change in majority ownership may be considered an assignment of the contract between the owners of the Trust Fund and the Company concerning matters of Investment Advising and Principal Underwriting, as defined in the Investment Act of 1940. Under the terms of such contract and such Act, a termination of the contract takes place upon its assignment.

The sale by Mr. Leach of his stock, while not conditioned on the approval by the Investors of the proposed Supplemental Trust Agreement, is to be synchronized with any action taken by the Investors, in order that the Investors may have the opportunity, if they wish, of making certain that the

contract with the Company concerning matters of Investment Advising and Principal Underwriting will continue in force, in practical effect, without interruption.

No changes are contemplated in the management of the Company, except that, as stated, Mr. Leach will become Chairman of the Board, and Mr. Leland M. Kaiser will become President, and except that, if the proposal is approved to establish a Board of Directors for the Trust, the Company will, in its relations with the Trust, be subject to the control, supervision and direction of such Board. The investment policies of the Company now set forth in its registration statement and prospectus will continue unchanged, except to the extent that the proposed changes set forth in this Proxy Statement are authorized by the Investors. The facilities and personnel for supervision, research and analysis of investment securities will continue to be maintained as at present without any material change, except such changes as may be designed to improve and amplify the services.

Information With Respect to Officers and Directors of Insurance Securities Incorporated

Name of Director	Principal Occupation or Employment	Year First Became Director	Beneficial Ownership June 30, 1956 Trust Fund[1] Invest. Units	%	Company Sh.	%
*Howard Ainsworth	Director, Manufacturer	1955	28,734.905	.03	None	
*John J. Allen, Jr.	Director, Member Congress of U. S., Attorney at Law	1954	None		None	
*William H. Bowen	Director, Vice-President, Investments Management Corporation	1956	1,100.175	—	None	
Ossian E. Carr	Director, Vice-President, Treasurer, Insurance Securities Incorporated	1939	108,940.912	.12	17,000	10.2
Roy A. Haight	Director, Secretary, Accountant, Insurance Securities Incorporated	1938	94,329.694	.10	17,000	10.2
Leland M. Kaiser	Director, Vice-President, Insurance Securities Incorporated, Investment Banker	1956	1,039.242	—	14,000[2]	8.4
Abe P. Leach	Director, President, Counsel, Insurance Securities Incorporated	1938	51,866.785	.06	17,000	10.2
*E. R. Leach	Director, Mining Engineer	1942	70,619.267	.08	None	

Name of Director	Principal Occupation or Employment	Year First Became Director	Beneficial Ownership June 30, 1956 Trust Fund[1] Invest. Units	%	Company Sh.	%
A. J. Lonergan	Director, Vice-President, Agent, Insurance Securities Incorporated	1938	155,673.436	.16	17,000	10.2
*Elwood Murphey	Director, Attorney at Law	1946	7,127.846	.01	None	
Donald B. Rice	Director, Vice-President, Insurance Securities Incorporated	1942	17,684.304	.02	1,000	.6
*Brayton Wilbur	Director, Importer and Exporter	1955	1,456.250	—	None	
*A. J. Woolsey	Director, Superior Judge, State of California	1942	10,788.636	.01	None	

*The members whose names are preceded by an asterisk, and constituting a majority of the Board, are not affiliated persons of Insurance Securities Incorporated as defined in the Investment Company Act of 1940, except as Directors.

[1]The stockholders of Insurance Securities Incorporated have a beneficial ownership in the Trust Fund through participating agreements of $233,000.00, representing 144,633.058 investment units or .15% standing in the name of Insurance Securities Incorporated. Elwood Murphey, as a partner in the law firm of Wells, Murphey and Coffey, participated in legal fees paid said firm of $6,125.00. Ossian E. Carr received $7,348.72 and Arthur J. Lonergan received $55,017.79 from the General Sales Agent for Insurance Securities Incorporated in payment of commissions upon sales made by them.

[2]See "Stockholdings in the Company" herein.

Mr. William H. Bowen was elected a director of the Company on February 24, 1956. He is a Vice President and a Director of Investments Management Corporation, Dallas, Texas. He is also a Director of the Indianapolis Water Company, Indianapolis, Indiana, and of Diebold, Inc., Canton, Ohio. Prior to joining Investments Management Corporation in 1953, he was a practicing attorney and had been a partner in the Chicago law firm of Chapman & Cutler, and the Dallas law firm of Jenkins & Bowen.

Mr. Leland M. Kaiser was elected a director February 24, 1956, and Vice-President February 28, 1956. He is senior partner of the investment banking firm of Kaiser & Co., San Francisco. He is also a Director of American Mail Line, Ltd., a Managing Partner of Tomahawk Oil and Gas Company. He is also a Director of California Taxpayers' Association, Trustee and Treasurer of World Trade Center, Inc., Trustee and Member of the Executive Committee of the San Francisco Bay Area Council. Previously, he served three years as Director of the San Francisco Chamber of Commerce and three years as Director of the San Francisco Community Chest.

No person has acted as an officer who was not a Director of the Company, except the Assistant Secretaries, who, by the Bylaws, are not required to be Directors.

All remuneration was paid in cash and no person who was a director or officer of Insurance Securi-

ties Incorporated at any time during the fiscal year ending December 31, 1955, received direct aggregate remuneration in excess of $30,000.00, except as shown below:

Name	Capacities in Which Remuneration Was Received	Direct Aggregate Remuneration
Ossian E. Carr	Vice-President and Treasurer, Member of Executive Committee, Director and Investment Analyst	$41,124.3
Roy A. Haight	Secretary, Member of Executive Committee, Director and Accountant	43,597.5
Abe P. Leach	President, Member of Executive Committee, Director and Legal Counsel	41,801.8
Arthur J. Lonergan	Vice-President, Member of Executive Committee and Director	41,124.3

The following persons, as a group, received the amount specified an no more:

(A) Indentity of Group	(B) Capacities in Which Remuneration Was Received	(C) Direct Aggregate Remuneration
Officers and Directors	Officers and Directors	$208,640.62

The Company has no bonus, profit sharing, or other remunerative plan and no pension or retirement plan or similar arrangement.

No part of said sums so received by said officers and directors were received directly from the Trust Fund, all of said sums being paid by Insurance Securities Incorporated out of the fees received. The only compensation paid by the Trust Fund to Insurance Securities Incorporated as Manager and Principal Underwriter of the Trust Fund was as follows: Administration Fees, $348,303; Investment Supervision and Management Fees, $211,972; Privi-

lege Fees, $1,362; and Gross Creation Fees or Sales Load, $5,548,964, out of which sum all new business acquisition expenses were paid including Gross Sales Commissions of $4,220,331.

No officer or director of Insurance Securities Incorporated or any person who was a nominee for election as a director was indebted to said Insurance Securities Incorporated or to said Issuer in any sum or amount or at all since the beginning of the last fiscal year of said Issuer, except insofar as an indebtedness may have been incurred in the ordinary course of business.

Since the beginning of the last fiscal year of the Issuer no person who was a director or officer of Insurance Securities Incorporated during such period, or who was a nominee for election as a director thereof, received remuneration directly or indirectly from said Insurance Securities Incorporated or from said Issuer in the form of securities, options, warrants, rights or other property or through the exercise or disposition thereof.

Except as described herein, no director or officer of said Insurance Securities Incorporated or any associate of any such director, officer, or nominee has had any material interest, direct or indirect, in any significant transactions or transaction since the beginning of the last fiscal year of the Issuer, or in any significant proposed transactions or transaction, to which the Issuer and any one or more of such persons were or are to be parties or in any

transactions or transaction which involved or which is to involve the purchase or sale of property by or to the Issuer otherwise than in the ordinary course of business.

That said Issuer has no subsidiary or any affiliate other than Insurance Securities Incorporated which is the Manager and Investment Advisor of Issuer. Pacific National Bank of San Francisco, a National Banking association, as sole Trustee of said Issuer, received as aggregate remuneration as such Trustee, after deducting the amount allowed the Company for performing administrative duties, the sum of $188,939 for said fiscal year.

Stockholdings in the Company

Messrs. Leach, Carr, Lonergan and Haight, Directors of the Company, each owned, as of June 30, 1956, 17,000 shares or 10.2% of the shares of the Company. Three of the other old stockholders held, in the aggregate, an additional 26,000 shares or 15.7%.

Mr. Kaiser, who is also a Director of the Company, has a 63.25% interest in Kaiser & Co., a limited partnership. Kaiser & Co. has acquired a beneficial ownership in an aggregate of 8,400 shares of the Company, 4,200 of which are held of record in the name of Mr. D. D. Harrington of Amarillo, Texas, and 2,200 in the name of Mr. S. W. Richardson and 2,000 in the name of Mr. Perry R. Bass, both of Fort Worth, Texas. In addition, Kaiser & Co. is a stockholder of Latmarco Incorporated,

and has a beneficial ownership in 6,000 shares of the Company held by Latmarco Incorporated. On the sale by Mr. Leach of substantially all of his holdings in the Company, referred to elsewhere herein, Kaiser & Co. expects to acquire a beneficial interest in an additional 3,200 shares which will be held of record in the name of Mr. D. D. Harrington. Kaiser & Co. will thus have a beneficial interest in a total of 17,600 shares or 10.6% of the Company.

Life Companies, Inc., owns all of the outstanding stock of Lamar Life Insurance Company and Atlantic Life Insurance Company, each of which, like Latmarco, hold 10,000 shares of the Company. Life Companies, Inc., is also a 40% stockholder of Latmarco Incorporated, and thus has a beneficial interest in a total of 24,000 shares or 14.5% of the Company, not including the 6,000 shares held by Latmarco Incorporated in which Kaiser & Co. has a beneficial interest.

Mr. D. D. Harrington has a beneficial interest in 16,800 shares or 10.1% of the Company, registered in his name, not including a contingent interest in 4,200 shares in which Kaiser & Co. has a beneficial interest. On the sale by Mr. Leach of substantially all of his holdings in the Company, referred to elsewhere herein, Mr. Harrington expects to acquire a beneficial interest in an additional 12,800 shares registered in his name. Mr. Harrington will thus have a beneficial interest in a total of 29,600 shares or 17.8% of the Company.

The Pacific National Bank of San Francisco has approved the proposed Supplemental Trust Agreement effecting the Amendments.

The enclosed Proxy, you will notice, provides for a vote "for" or "against" the adoption of said Supplemental Agreement and the adoption of the Amendments set forth therein. We trust you will indicate your approval in order that the purposes hereinabove may be accomplished. Remember that you must not only sign but also date the Proxy.

The beneficial units represented by said Proxy will be voted in accordance with the specifications. To become effective, each proposed amendment must be authorized by the holders of a majority of the investment units of the outstanding Participating Agreements, and Investors holding at least 25% of the total face amount of all Participating Agreements issued and outstanding at the time of mailing of notice of such proposed amendments must not, within sixty (60) days after the mailing of said notice, i.e., September 15, 1956, have delivered to Company written notice of dissent to such proposed amendment. If such proposed amendments become effective, they shall become binding upon each of the Investors, and dissenting Investors may surrender and terminate their Participating Agreements as provided therein or continue to hold the same under the Trust Agreement as so amended.

The Securities and Exchange Commission does not pass on the merits of any proposal submitted to Investors.

Dated: July 17, 1956, Oakland, California.

INSURANCE SECURITIES
INCORPORATED,

By R. A. HAIGHT,
Secretary.

Insurance Securities Incorporated
Oakland, California

Notice of Meeting of Investors

in a Trust Fund established under an Amended Trust Agreement dated December 18, 1939, as amended and supplemented, between Insurance Securities Incorporated, Pacific National Bank of San Francisco and Investors.

A meeting of Investors as aforesaid is hereby called by the Board of Directors of Insurance Securities Incorporated and by Pacific National Bank of San Francisco, as Trustee, to be held at The Bowl, Hotel Leamington, 19th and Franklin Streets, Oakland, California, on August 15, 1956, at 10:00 o'clock a.m. Pacific Daylight Saving Time, to consider and act upon proposals to amend the Amended Trust Agreement, as amended and supplemented.

1. To provide a board of trustees, to be known as the Board of Directors, to supervise the management of the business and affairs of the Trust;

2. To enlarge the list of Eligible Companies;

3. To change provision relating to designation of a Beneficiary;

4. To change provision relating to the Assignment of a Participating Agreement;

5. To reinstate the Investment Advisory contract with Insurance Securities Incorporated; and

6. To reinstate the Principal Underwriting contract with Insurance Securities Incorporated;

and to consider and act upon any other matters which may properly come before the meeting or any adjournment thereof.

Investors are urged to sign, date and return the enclosed Proxy immediately.

Dated: July 17, 1956.

INSURANCE SECURITIES INCORPORATED,

R. A. HAIGHT,
Secretary.

PACIFIC NATIONAL BANK OF SAN FRANCISCO,
As Trustee.

J. B. CHAMBERLAIN,
Trust Officer.

Proxy

The undersigned, holder of one or more Participating Agreements under the Amended Trust Agreement, hereby acknowledges receipt of a Notice of Meeting of Investors, of a Notice of Proposed Supplemental Agreement and of a Proxy Statement relating to approval of the proposed amendments to the Amended Trust Agreement and hereby constitutes and appoints Abe P. Leach, Leland M. Kaiser and R. A. Haight, Attorneys and Proxies for and on behalf of the undersigned to act and vote at a meeting of Investors to be held at The Bowl, Hotel Leamington, 19th and Franklin Streets, Oakland, California, on August 15, 1956, and at any adjournment or adjournments thereof in connection with (1) the proposals referred to below and (2) any other business which may be brought before such meeting or any adjournment thereof, according to the number of votes and as fully as the undersigned would be entitled to act and vote if personally present.

A majority of said Attorneys and Proxies who shall be present and acting as such at said meeting or any adjournment thereof, or if only one such Attorney and Proxy be present and acting then that one, shall have and may exercise all the powers hereby conferred.

Said Attorneys and Proxies are directed to vote as follows upon the following proposals more fully described in the Proxy Statement:

	For	Against
1. A proposal to provide a Board of Directors to supervise the management of the Trust.....	☐	☐
2. A proposal to enlarge the list of Eligible Companies.....	☐	☐
3. A proposal to change provision relating to designation of Beneficiary	☐	☐
4. A proposal to change provision relating to assignment of Participating Agreement.....	☐	☐
5. A proposal to reinstate contract as Investment Adviser.....	☐	☐
6. A proposal to reinstate contract as Principal Underwriter.....	☐	☐

Please Mark, Date, Sign and Mail at Once in Return Envelope. No Postage Required.

The Company Favors a Vote for Each of the Above Proposals

This Proxy shall be voted as directed or, where no direction is indicated, shall be voted For the proposal.

This Proxy shall be deemed to cover all Participating Agreements owned by me (us) in the Trust Fund.

Dated ....., 1956

Signature .....

Signature .....

Executors, Administrators, Trustees, Attorneys, etc., should so indicate when signing.

This Proxy is solicited on behalf of the Management.

[Stamped]: Received July 16, 1956, U.S.S.E.C.

Duly verified.

[Endorsed]: Filed August 13, 1956.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

The Securities and Exchange Commission, plaintiff herein, amends its complaint in the following respects:

1. Page 1, line 25, strike the first five words and in lieu thereof substitute the following: "It appearing that Insurance Securities Incorporated and the."

2. Page 7, line 27, insert after the words "director-defendants" the words "and Insurance Securities."

3. Add to page 9, paragraph 31, the following:

> "It also omits to state the net asset or net book value, per share, of the stock of Insurance Securities. It also omits to state the aggregate profit the director-defendants have obtained or will obtain from the sale of their stock of Insurance Securities."

4. Add to page 9, paragraph (1) of the relief sought the following: "and permanently enjoining

Insurance Securities Incorporated from acting as investment adviser and principal underwriter of the Trust Fund."

Dated: August 13, 1956.

/s/ THOMAS G. MEEKER,
General Counsel;

/s/ AARON LEVY,
Attorney, Securities and Exchange Commission.

/s/ F. E. KENNAMER, JR.,
Attorney, Securities and Exchange Commission.

Duly verified.

[Endorsed]: Filed August 13, 1956.

[Title of District Court and Cause.]

INTERLOCUTORY ORDER

This action came on for hearing this 14th day of August on the application of the Securities and Exchange Commission, plaintiff herein, for a preliminary injunction; and the defendants and each of them, other than the Trust Fund, through their counsel having tendered in open Court an Undertaking to refrain from voting proxies received from investors in the Trust Fund sponsored by defendant Insurance Securities Incorporated at the meeting of Investors scheduled for August 15, 1956, or

at any adjournment thereof, with respect to the following proposals:

(a) The proposed reinstatement of the Investment Advisory Contract between Insurance Securities Incorporated and the Trust Fund.

(b) The proposed reinstatement of the Principal Underwriting Contract between Insurance Securities Incorporated and the Trust Fund.

(c) The election of Abe P. Leach and Roy A. Haight as members of the board of directors of the Trust Fund.

pending further order of the Court; and the Court having approved said Undertaking;

It Is Ordered that the defendants comply with said Undertaking, and that subject to compliance therewith, the hearing on the plaintiff's application for a preliminary injunction is hereby continued to September 7, 1956, at 10:00 a.m.

It Is Further Ordered that the entry of the foregoing Interlocutory Order is without prejudice to any other relief to which the parties may be entitled.

Dated: August 14, 1956.

/s/ LOUIS E. GOODMAN,
United States District Judge.

The parties hereto stipulate to the entry of the foregoing Interlocutory Order.

SECURITIES AND
EXCHANGE COMMISSION,

By /s/ AARON LEVY,

/s/ F. E. KENNAMER, JR.,
Attorneys for Plaintiff.

/s/ PHILIP S. EHRLICH,

/s/ ALFRED JARETZKI, JR.,

/s/ ELWOOD MURPHEY,
Attorneys for Defendants
Other Than Trust Fund.

[Endorsed]: Filed August 14, 1956.

[Title of District Court and Cause.]

REQUEST FOR ADMISSION OF FACT

Pursuant to Rule 36 of the Rules of Civil Procedure defendants Insurance Securities Incorporated, Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight, and Leland M. Kaiser as attorney and proxy for investors of Trust Fund, request plaintiff to admit, within ten (10) days after service of this request, the truth of certain matters of fact, as follows:

1. That under date of August 13, 1956, the plaintiff Securities and Exchange Commission issued its so-called "Litigation Release No. 1007," which contained the following statement:

> "In connection with the filing of the action, Chairman J. Sinclair Armstrong of the Commission issued the following statement:
>
> " 'The investors in the Trust Fund, managed and sponsored by Insurance Securities, Inc., should not be injured in any way whatsoever by the action taken today by the Securities and Exchange Commission. The suit brought by the Commission is intended to assure to investors legal protection which the Commission believes was intended by the Congress in the Investment Company Act of 1940. We want to emphasize that the action does not concern the investments in insurance stocks nor the portfolio of the Trust Fund, nor the manner in which Insurance Securities, Inc., has managed the funds invested in Trust Fund.
>
> " 'The complaint does not allege that the defendants have mismanaged or misappropriated any of the assets of the Trust Fund. The filing of the complaint is not intended to disturb the value of investments in the Trust Fund which as of December 31, 1955, totaled about $215,000.000.' "

2. That it is not contended by plaintiff, and that no charge is made, that any defendant has misman-

aged or misappropriated any of the assets of the Trust Fund.

Dated: August 20, 1956.

/s/ MOSES LASKY,

BROBECK, PHLEGER & HARRISON.

/s/ PHILIP S. EHRLICH,

/s/ ALFRED JARETZKI, JR.,

SULLIVAN & CROMWELL.

/s/ ELWOOD MURPHEY,

Attorneys for the Aforementioned Defendants.

Service of copy acknowledged.

[Endorsed]: Filed August 21, 1956.

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS AND TO DISSOLVE

To: Plaintiff Securities and Exchange Commission, and to Its Attorneys, Thomas G. Meeker, Esq.; Aaron Levy, Esq., and Franklin E. Kennamer, Esq.:

Please Take Notice, hereby given, that on Friday, September 7, 1956, at 10 o'clock a.m. or as soon thereafter as counsel can be heard, defendants In-

surance Securities Incorporated, Abe P. Leach, Ossion E. Carr, Arthur J. Lonergan, Roy A. Haight, and Leland M. Kaiser as attorney and proxy for investors of Trust Fund, will move the above-entitled court, before the Honorable Louis E. Goodman, in the court room at Seventh and Mission Streets, San Francisco, California, as follows:

1. To Dismiss the alleged first count or "first cause of action" of the complaint as against these defendants, and severally as against each of them, for failure to state a claim for relief.

2. To Dismiss the alleged second count or "second cause of action" of the complaint as against these defendants, and severally as against each of them, for failure to state a claim for relief.

3. To Dissolve the interlocutory order entered herein on or about August 14, 1956.

The motions to dismiss will be based on the complaint herein. The motions to dismiss will also be based upon the complaint and on all other pleadings and papers on file herein, including the affidavit of Jack I. Elias filed herein by plaintiff, and the affidavits filed herewith in opposition to the application for a preliminary injunction, to wit, the affidavits of Leland M. Kaiser, Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight, D. D. Harrington, John D. Murchison, S. W. Richardson, Perry R. Bass, and such other affidavits as may be filed on or before the hearing of the motions, as well as on all admissions made prior thereto.

The motion to dissolve will be based upon each and all the papers and data mentioned above, and will be made on the ground that the said interlocutory order was to remain in effect until the further order of the Court, and that no interlocutory injunction or restraint is warranted under the statute or in equity.

Dated: August 24, 1956.

/s/ MOSES LASKY,

BROBECK, PHLEGER & HARRISON,

/s/ PHILIP S. EHRLICH,

/s/ ALFRED JARETZKI, JR.,

SULLIVAN & CROMWELL,

/s/ ELWOOD MURPHEY,

Attorneys for Above-Named Defendants.

Due service and receipt of a copy of the within is hereby admitted this 24th day of Aug., 1956.

/s/ F. E. KENNAMER,

Attorney for Plaintiff.

[Title of District Court and Cause.]

AFFIDAVIT OF LELAND M. KAISER ON BEHALF OF DEFENDANTS

State of California,
City and County of San Francisco—ss.

Leland M. Kaiser, being first duly sworn, deposes and says:

I am a director and the president of Insurance Securities Incorporated, hereafter called ISI. At all times herein mentioned, I have been and am now a general partner in the co-partnership known as Kaiser & Co., investment bankers of San Francisco, California.

I have read the complaint herein and note paragraph 18 thereof, which reads as follows:

> "18. During the same period, the director-defendants sold to the purchasers the following number of shares:
>
> | | |
> |---|---|
> | Leach | 29,000 shares |
> | Carr | 13,000 shares |
> | Lonergan | 13,000 shares |
> | Haight | 13,000 shares |
>
> By reason of the aforesaid transfers, the director-defendants reduced their stock interests in Insurance Securities from 72% to 31.2%. The amount thus transferred to the purchasing group amounted to about 40.8% of the total outstanding. The balance of approximately

13% were purchased from the other individual holders except Rice."

Among the erroneous allegations in this passage is the allegation of a "purchasing group." There is not and never was a "purchasing group" that purchased the stock in question. The facts are as follows.

Some time prior to the year 1956 my attention was drawn to ISI, particularly by the fact that the President of ISI, Mr. Abe P. Leach, was then over 80 years of age. It occurred to me that in due course of events stock of ISI would come onto the market. As an investment banker, it is part of my profession and occupation to find buyers for securities seeking buyers, and to find opportunities for capital seeking investment. I therefore approached Mr. Leach. He first stated that he was not interested in selling, but on a later approach he stated that, while he was interested, he would sell none of his stock unless an opportunity were given to other stockholders to sell theirs. I talked to Messrs. Ossian E. Carr, Arthur J. Lonergan and Roy A. Haight, who were stockholders.

Meanwhile I interested Mr. D. D. Harrington of Amarillo, Texas, and John D. Murchison of Dallas, Texas, president of Life Companies, Inc., in ISI stock. In February, 1956, I obtained separate options from each of the following stockholders of ISI, to wit: Messrs. Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight and E. Smith, each of whom granted to Kaiser & Co. or to such

person or persons as I might interest the right to buy 8,000 shares of ISI stock. (At that time it was 8 shares each, but subsequently the stock was split 1,000 for 1. This affidivit will follow the complaint in referring to the stock by its post split-up equivalents.)

Mr. D. D. Harrington then bought 10,000 shares, and Mr. John D. Murchison, the President of Life Companies, Incorporated (hereafter called Life), caused subsidiaries of Life to buy a total of 30,000 shares. The several sales were consummated in February, 1956. 10,000 shares were transferred to Atlantic Life Insurance Co. and 10,000 shares to Lamar Life Insurance Co., each of which is a subsidiary of Life. 10,000 shares were transferred to Latmarco Incorporated, of which Life owns all the voting stock. And 10,000 shares were transferred to D. D. Harrington. Atlantic, Lamar and Latmarco may be said to be a group since they are affiliated through Life and hereafter in this affidavit will be referred to as the "Life group." But D. D. Harrington was and is no part of the Life group and the sales to the two were separately arranged and had no connection with each other.

In May, 1956, I interested D. D. Harrington in the idea of purchasing more ISI stock if it could be obtained. Independently and wholly unrelated to Mr. Harrington, I interested Richardson & Bass of Fort Worth, Texas, in buying ISI stock. I then approached the following stockholders of ISI and obtained from them options to buy running to

Kaiser & Co. or such person or persons as I might interest covering the following number of shares:

Abe P. Leach	5,000 shares
Ossian E. Carr	5,000 shares
Arthur J. Lonergan	5,000 shares
Roy A. Haight	5,000 shares
Elwood E. Smith	3,000 shares
Mrs. Hazel Plant	5,000 shares
Barbara I. McConnell	2,000 shares
Walter E. Smith	2,000 shares

In due course, in May, 1956, sales of this aggregate quantity of stock were effected as follows: 11,000 shares, consisting of 3,000 shares belonging to Elwood Smith, 4,000 shares belonging to Mrs. Hazel Plant, 2,000 shares belonging to Barbara I. McConnell, and 2,000 shares belonging to Walter E. Smith, were sold and transferred to D. D. Harrington. None of these sellers was or is a director of ISI.

The 20,000 shares coming from Leach, Carr, Lonergan and Haight, plus 1,000 shares sold by Mrs. Plant, were sold and transferred to Richardson & Bass. Thus, four persons made sales to Mr. Harrington and five persons made sales to Richardson & Bass. The four sales to Mr. Harrington were wholly separate from the five sales to Richardson & Bass. The several sales were separately arranged, had no connection with each other, and there was no understanding obtained or arranged by me among them.

Shortly afterwards the partnership of Richardson & Bass transferred 11,000 of the shares obtained by it to S. W. Richardson, and 10,000 shares to Perry R. Bass.

Still later I approached Mr. Leach again in view of the fact that he was rapidly approaching his eighty-third birthday and there was talk of his retirement from active management. Mr. Leach was persuaded and in July, 1956, entered into an agreement with Kaiser & Co. for the sale of 16,000 shares of stock to Kaiser & Co. or someone I should interest. A copy of the agreement is attached to an affidavit of Mr. Leach filed concurrently herewith. In turn, I interested Mr. D. D. Harrington in buying the 16,000 shares and he has agreed to do so upon the terms expressed in such agreement.

There was and is not to my knowledge any affiliation or relationship between the Life group or any stockholder thereof or interest therein, on the one hand, and either D. D. Harrington, S. W. Richardson or Perry R. Bass, on the other.

In consideration of my services as a partner in Kaiser & Co., acting in the capacity of investment bankers in bringing together the several distinct buyers and sellers, as stated above, I obtained distinct and separate agreements with (a) Mr. D. D. Harrington, (b) Mr. S. W. Richardson, and (c) Mr. Perry R. Bass, whereby each has given Kaiser & Co. an interest in 20% of their respective shares in ISI and the exclusive right to vote the number

of shares equal to 20% of the total transferred to each one, respectively. And by virtue of an agreement with Mr. D. D. Harrington, Kaiser & Co. will obtain the exclusive right to vote 3200 shares (20% of 16,000) when the last sale is consummated.

In consideration of the services rendered by Kaiser & Co. as investment bankers in the sale to the Life group, Kaiser & Co. obtained by agreement with Latmarco the exclusive right to vote 6,000 shares of stock owned by Latmarco (Kaiser & Co. owns 60% of the capital stock of Latmarco).

Neither Kaiser & Co., nor any partner of Kaiser & Co., has any understanding, arrangement or contract, other than those mentioned specifically above, with Life or any affiliate of Life, or with S. W. Richardson, D. D. Harrington, or Perry R. Bass, or with anyone else who owns any stock of ISI or possesses any beneficial interest therein concerning ISI stock or the voting thereof, or any purchase or sale thereof to be made hereafter. And none is affiliated with any one in respect to ISI stock, or part of any group owning or possessing any ISI stock or beneficial interest therein.

As a consequence of the various sales referred to above, namely, the sales to the Life group in February, 1956, the sales to D. D. Harrington in February, 1956, the sales to D. D. Harrington in May, 1956, the sales to Richardson & Bass in May, 1956, and the subsequent transfer to S. W. Richardson and Perry R. Bass, and the contract of sale of July,

1956, to D. D. Harrington, and as a consequence of the several agreements between the respective purchasers and Kaiser & Co., the following situation now exists:

Name		No. of Shares	% of ISI Shares Outstanding
fe Group	has become the absolute owner of and entitled to vote	24,000	14.5%
D. Harrington	upon consummation of the last sale, will have become the absolute owner of and entitled to vote of which more than ⅓ will have been purchased from stockholders who were not directors of ISI and not defendants in this cause	29,600 or	17.8%
W. Richardson	has become the absolute owner of and entitled to vote	8,800	5.3%
rry R. Bass	has become the absolute owner of and entitled to vote	8,000	4.8%
iser & Co.	will have become the owner of a beneficial interest in and entitled to vote	17,600	10.6%

It will be seen that even after consummation of the last sale provided for in the contract of July, 1956, and even if the number of shares in which Kaiser & Co. has a beneficial interest were added to the holdings of the other purchasers, considerably less than 25% of the stock of ISI will have been sold to and transferred to any one purchaser.

Kaiser & Co. is free to exercise its own individual judgment with respect to voting any and all ISI

stock for which it has been given voting rights as stated above, and intends to do so at all times.

/s/ LELAND M. KAISER.

Subscribed and sworn to before me this 23rd day of August, 1956.

[Seal] /s/ MAUDE N. NASH,
Notary Public in and for the City and County of San Francisco, State of California.

My Commission Expires October 14, 1958.

[Title of District Court and Cause.]

AFFIDAVIT OF ABE P. LEACH ON BEHALF OF DEFENDANTS

State of California,
County of Alameda—ss.

Abe P. Leach, being first duly sworn, deposes and says:

I.

I am one of the named defendants in the above-entitled cause and a member of the State Bar of California. For many years prior to February, 1956, I was the owner of 30 shares of the capital stock of Insurance Securities Incorporated (hereafter called ISI), its President, chief executive officer and legal counsel. At that time the total num-

ber of shares outstanding of ISI was 166. In June, 1956, the stock was split so that 1,000 shares were substituted for each 1 share, and ever since the total number of shares outstanding has been 166,000. In this affidavit, with respect to times prior to the split as well as subsequent, the stock will be referred to in terms of its equivalents subsequent to June, 1956.

II.

My attention has been called to the allegation of paragraph 16 of the complaint reading as follows:

> "Upon information and belief, on or about February 1, 1956, the director-defendants, either alone or in concert with others, embarked upon a plan to sell their stock interests to a small number of purchasers, affiliated among each other through stock ownership and otherwise."

This allegation is untrue in several respects. First, it is not true if construed as alleging that I acted in concert with anyone else. Second, it is untrue in alleging that I embarked on a plan to sell my stock interest to any purchasers affiliated with or among each other in any manner or by any means. Third, it is untrue in alleging that I embarked on any plan with respect to my stock in February, 1956, or any other time.

The facts are these: Prior to February, 1956, Mr. Leland M. Kaiser, a general partner of Kaiser & Co., investment bankers of San Francisco, Cali-

fornia, had approached me and inquired of me whether I was interested in selling my shares. I said to him that other stockholders of ISI must be given an equal opportunity to sell stock if they desired. In February, 1956, I gave a written option to Kaiser & Co. to buy 8,000 shares of my stock, and to assign to others the right to buy some or all of said shares. Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight and E. Smith were stockholders of ISI, and I understand that each gave to Kaiser & Co. an option covering 8,000 shares apiece. I was not acting in concert with said Carr, Lonergan, Haight and Smith, or with any of them, and regardless of whether they or any of them sold, I would have been willing to sell or to give an option to sell the 8,000 shares of mine covered by the agreement.

Thereafter, in February, and pursuant to the option, I transferred my said 8,000 shares simultaneously with the transfer of an aggregate of 32,000 shares by others, and 10,000 shares each were transferred to Atlantic Life Insurance Co., Lamar Life Insurance Co., Latmarco Incorporated, and D. D. Harrington.

Later, Leland M. Kaiser of Kaiser & Co. again approached me with respect to obtaining an option to purchase additional stock, and I gave Kaiser & Co. a similiar option to purchase 5,000 shares. In May, 1956, the 5,000 shares were transferred contemporaneously with transfers of an aggregate of 32,000 shares by eight stockholders of ISI, viz.,

Messrs. Carr, Lonergan, Haight, E. Smith, W. Smith, Miss McConnell and Mrs. Plant. I was not acting in concert with any of these people, and regardless of whether they or any of them sold, I would have been willing to sell or give an option to sell the 5,000 shares of mine covered by the agreement.

In selling said 8,000 shares of stock, and later the 5,000 shares, I knew nothing about the existence of any affiliation among transferees, if any existed. I did not embark upon a plan to sell to affiliated buyers.

In June, 1956, Mr. Kaiser asked me whether I was willing to sell additional stock. I came to the decision that, since I was approaching my eighty-third birthday, I should retire from active management, and therefore, I desired to dispose of substantially all the remainder of my stock in ISI, which at that time constituted 17,000 shares. As a consequence I entered into an agreement with Kaiser & Co., a true copy of which is attached as Exhibit 1. At that time no other stockholders of ISI, to my understanding or knowledge, entered into any agreements of option or sale to dispose of any of their stock, and I was not interested in whether other stockholders were or were not making sales.

None of the stock covered by said agreement (Exhibit 1) has yet been transferred. As the agreement states, it provides that transfer of the stock will be made and the sale consummated regardless of

whether or not the Amendment to the Trust Agreement constituting a new contract between the trustee and ISI concerning matters of investment advice and principal underwriting was approved by the investors. The agreement provides that the consummation of the sale and transfer will take place on the day when said Amendment to the Trust Agreement becomes effective, if it is adopted, and in the event it is not approved by the investors as required by the trust agreement and by law, then on the seventh day after rejection of the amendment by the investors. Neither event has occurred and no part of the said 17,000 shares has been transferred.

/s/ ABE P. LEACH.

Subscribed and sworn to before me this 22nd day of August, 1956.

[Seal] /s/ WM. S. WELLS, JR.,
Notary Public in and for the County of Alameda, State of California.

EXHIBIT 1

This Agreement, made this 7th day of July, 1956, by and between Abe P. Leach (hereinafter called "Leach") and Kaiser & Co., a partnership formed under the laws of the State of California (hereinafter called "Kaiser"),

Witnesseth

1. Leach hereby agrees to sell to Kaiser and Kaiser agrees to purchase from Leach sixteen thousand (16,000) shares of the common capital stock of Insurance Securities Incorporated at a price of fifty dollars ($50) per share.

2. Kaiser agrees that under no circumstances will it acquire for its own account more than twenty-four and three-fourths per cent (24¾%) of said sixteen thousand (16,000) shares, or of the total outstanding shares of Insurance Securities Incorporated, it being understood that this contract is being obtained by Kaiser for the purpose of affecting the distribution of more than seventy-five per cent (75%) of said sixteen thousand (16,000) shares to one or more other purchasers.

3. Kaiser agrees that any purchaser or purchasers to whom it may assign the right to purchase all or any part of said sixteen thousand (16,000) shares shall not, as a result of such purchase, hold individually a beneficial interest in, or a right to vote, more than twenty-four and three-fourths per cent (24¾%) of the voting shares of Insurance Securities Incorporated.

4. Leach agrees to make delivery of the certificate or certificates for said sixteen thousand (16,000) shares endorsed in blank and Kaiser agrees to make payment therefore on the same day as, but immediately prior to, the effective time of the Amendment to the Trust Agreement, constituting

a new contract between the Trustee and Insurance Securities Incorporated, concerning matters of Investment advising and principal underwriting, but if such amendment and contract be not approved as required by the Trust Agreement and by law, then upon the seventh (7th) day after its rejection by investors in the trust fund, and title to said shares shall vest in Kaiser at the time herein provided for delivery of said shares to Kaiser.

5. Leach agrees to pay the Federal stock transfer tax upon the sale of said sixteen thousand (16,000) shares.

6. This agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the respective parties hereto.

In Witness Whereof, the parties hereto have hereunto set their hands as of the date first above written.

.....,

ABE P. LEACH.

KAISER & CO.,

By .....

[Title of District Court and Cause.]

AFFIDAVIT OF OSSIAN E. CARR ON BEHALF OF DEFENDANTS

State of California,
County of Alameda—ss.

Ossian E. Carr, being first duly sworn, deposes and says:

I am one of the named defendants in the above-entitled cause. For many years prior to February, 1956, I owned 30 shares (now 30,000 shares in view of subsequent split-up) of the capital stock of Insurance Securities Incorporated, hereafter called ISI. Hereafter in this affidavit the shares will be referred to in terms of their equivalents after the split-up.

I have read the sentence on page 16 of the complaint reading as follows:

> "Upon information and belief, on or about February 1, 1956, the director-defendants, either alone or in concert with others, embarked upon a plan to sell their stock interests to a small number of purchasers, affiliated among each other through stock ownership and otherwise."

This allegation is untrue (1) so far as it may be deemed to allege that I acted in concert with anyone else; (2) insofar as it alleges that I embarked on a plan to sell my stock interest to any purchasers affiliated with or among each other in any manner

or by any means; and (3) so far as it alleges that I embarked on any plan in February, 1956, or at any other time.

Prior to February, 1956, I was advised that Mr. Leland M. Kaiser, a general partner of Kaiser & Co., had approached Mr. Abe P. Leach, President of ISI and a stockholder, with respect to obtaining an option to purchase his stock. Subsequently, I granted my own option to Kaiser & Co. to purchase 8,000 shares of my stock or to assign the right to purchase to others, in whole or in part. I understand that Abe P. Leach, Arthur J. Lonergan, Roy A. Haight and E. Smith each also executed an option covering 8,000 shares. I was not acting in concert with said Leach, Lonergan, Haight and Smith, or with any of them, and would have been willing to sell or to give an option to sell my 8,000 shares covered by the agreement, whether or not any of the other persons above-named gave or was willing to give an option or to sell. Thereafter in February, and pursuant to the option, I transferred my said 8,000 shares.

Later, Mr. Kaiser approached me with respect to obtaining an option to purchase additional stock, and I gave Kaiser & Co. a similar option to purchase 5,000 shares. In May, 1956, the said 5,000 shares were transferred contemporaneously with transfers of an aggregate of 32,000 shares by eight stockholders of ISI.

In selling the 8,000 shares in February and again in selling the 5,000 shares in May, I knew nothing

about the existence of any affiliation among transferees, if there was any. I did not embark upon a plan to sell to affiliated buyers.

/s/ OSSIAN E. CARR.

Subscribed and sworn to before me this 22nd day of August, 1956.

[Seal] /s/ WM. S. WELLS, JR.
Notary Public in and for the County of Alameda, State of California.

[Title of District Court and Cause.]

AFFIDAVIT OF ARTHUR J. LONERGAN ON BEHALF OF DEFENDANTS

State of California,
County of Alameda—ss.

Arthur J. Lonergan, being first duly sworn, deposes and says:

I am one of the named defendants in the above-entitled cause. For many years prior to February, 1956, I owned 30 shares (now 30,000 shares in view of subsequent split-up) of the capital stock of Insurance Securities Incorporated, hereafter called ISI. Hereafter in this affidavit the shares will be referred to in terms of their equivalents after the split-up.

I have read the sentence on page 16 of the complaint reading as follows:

> "Upon information and belief, on or about February 1, 1956, the director-defendants, either alone or in concert with others, embarked upon a plan to sell their stock interests to a small number of purchasers, affiliated among each other through stock ownership and otherwise."

This allegation is untrue (1) so far as it may be deemed to allege that I acted in concert with anyone else; (2) insofar as it alleges that I embarked on a plan to sell my stock interest to any purchasers affiliated with or among each other in any manner or by any means; and (3) so far as it alleges that I embarked on any plan in February, 1956, or at any other time.

Prior to February, 1956, I was advised that Mr. Leland M. Kaiser, a general partner of Kaiser & Co., had approached Mr. Abe P. Leach, President of ISI and a stockholder, with respect to obtaining an option to purchase his stock. Subsequently, I granted my own option to Kaiser & Co. to purchase 8,000 shares of my stock or to assign the right to purchase to others, in whole or in part. I understand that Abe P. Leach, Ossian E. Carr, Roy A. Haight and E. Smith each also executed an option covering 8,000 shares. I was not acting in concert with said Leach, Carr, Haight and Smith, or with any of them, and would have been willing to sell or to give an option to sell my 8,000 shares covered

by the agreement, whether or not any of the other persons above-named gave or was willing to give an option or to sell. Thereafter in February, and pursuant to the option, I transferred my said 8,000 shares.

Later, Mr. Kaiser approached me with respect to obtaining an option to purchase additional stock, and I gave Kaiser & Co. a similar option to purchase 5,000 shares. In May, 1956, the said 5,000 shares were transferred contemporaneously with transfers of an aggregate of 32,000 shares by eight stockholders of ISI.

In selling the 8,000 shares in February and again in selling the 5,000 shares in May, I knew nothing about the existence of any affiliation among transferees, if there was any. I did not embark upon a plan to sell to affiliated buyers.

/s/ ARTHUR J. LONERGAN.

Subscribed and sworn to before me this 22nd day of August, 1956.

[Seal] /s/ WM. S. WELLS, JR.,
Notary Public in and for the County of Alameda, State of California.

[Title of District Court and Cause.]

AFFIDAVIT OF ROY A. HAIGHT ON BEHALF OF DEFENDANTS

State of California,
County of Alameda—ss.

Roy A. Haight, being first duly sworn, deposes and says:

I.

I am one of the named defendants in the above-entitled cause, and I am now and at all times mentioned have been the Secretary of Insurance Securities Incorporated, hereafter called ISI. For many years prior to February, 1956, I owned 30 shares (now 30,000 shares in view of subsequent split-up) of the capital stock of ISI. Hereafter in this affidavit the shares will be referred to in terms of their equivalents after the split-up.

II.

I have read the sentence on page 16 of the complaint reading as follows:

> "Upon information and belief, on or about February 1, 1956, the director-defendants, either alone or in concert with others, embarked upon a plan to sell their stock interests to a small number of purchasers, affiliated among each other through stock ownership and otherwise."

This allegation is untrue, (1) so far as it may be deemed to allege that I acted in concert with any-

one else; (2) insofar as it alleges that I embarked on a plan to sell my stock interest to any purchasers affiliated with or among each other in any manner or by any means, and (3) so far as it alleges that I embarked on any plan in February, 1956, or at any other time.

Prior to February, 1956, I was advised that Mr. Leland M. Kaiser, a general partner of Kaiser & Co., had approached Mr. Abe P. Leach, President of ISI and a stockholder, with respect to obtaining an option to purchase his stock. Subsequently, I granted my own option to Kaiser & Co. to purchase 8,000 shares of my stock or to assign the right to purchase to others in whole or in part. I understand that Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan and E. Smith each also executed an option covering 8,000 shares. I was not acting in concert with said Leach, Carr, Lonergan and Smith, or with any of them, and would have been willing to sell or to give an option to sell my 8,000 shares covered by the agreement, whether or not any of the other persons above-named gave or was willing to give an option or to sell. Therafter, in February, and pursuant to the option, I transferred my said 8,000 shares.

Later, Mr. Kaiser approached me with respect to obtaining an option to purchase additional stock, and I gave Kaiser & Co. a similar option to purchase 5,000 shares. In May, 1956, the said 5,000 shares were transferred contemporaneously with

transfers of an aggregate of 32,000 shares by eight stockholders of ISI.

In selling the 8,000 shares in February, and again in selling the 5,000 shares in May, I knew nothing about the existence of any affiliation among transferees, if any existed. I did not embark upon a plan to sell to affiliated buyers.

III.

I have read the Affidavit of Jack I. Elias filed by plaintiff herein. It is true, as there stated, that I received the letter from the Division of Corporate Finance, Securities and Exchange Commission, dated July 10, 1956, a copy of which is attached to Mr. Elias' affidavit as Exhibit I. All the suggestions for change and revision in the proxy solicitation material were duly made, and the proxy solicitation material as sent to the investors embodied all such changes. Never, by letter or otherwise, did anyone in the Securities and Exchange Commission suggest or request any further or different changes or revisions or intimate that any should be made.

The said letter of July 10, 1956, from the Division of Corporate Finance contains the sentence:

> "We understand that our Division of Corporate Regulation has raised certain questions regarding the assignment of the Investing, Advising and Underwriting Contracts."

But never orally or in any other manner did anyone in the Securities and Exchange Commission suggest

or request any insertion or change in the proxy solicitation material referring to or relating to that fact.

After receipt of the letter on July 12, 1956, I was in communication with the attorney under whose supervision the proxy material was prepared, Alfred Jaretzki, Jr., Esq., of the law firm of Sullivan & Cromwell in New York City, discussed the letter with him and thereafter followed his legal advice on what was required.

It is also true, as stated in Mr. Elias' affidavit, that on or about July 13, 1956, to wit July 12, 1956, he telephoned to me. Mr. Elias referred to Section 36 of the Investment Company Act of 1940, but he did not say, suggest or intimate that additions or revisions should be made in the proxy solicitation material as a consequence of or related to Section 36. Mr. Elias merely asked for the information mentioned in his affidavit, and all material requested by him was in fact sent to him by Mr. Jaretzki. I asked Mr. Elias whether I was free to mail the proxy solicitation material or whether there was anything in the telephone call which affected my doing so. Mr. Elias did not at any time state, suggest or intimate that, in order to avoid a charge of being false or misleading, the proxy solicitation material should contain any reference to the so-called Section 36 problem or the facts connected therewith.

IV.

As secretary of the ISI, I know the provisions of of the Amended Trust Agreement, last amended as

of October 1, 1954, which is the instrument referred to in paragraph 5 and elsewhere in the complaint herein. Article XI of said agreement contains the following provisions:

"Section 1.

Amendments Authorized.

Company may at any time propose amendments to this Trust Agreement by adoption of a resolution by its Board of Directors proposing such amendments, provided that such amendments, if adopted, shall not in anywise affect the amount of the monthly payments to be made on Participating Agreements then issued and outstanding, or the property held in Trust with respect to any such Participating Agreement, or shall not give any Participating Agreements any preference or priority over other Participating Agreements then issued and outstanding with respect to any funds or property held by Trustee in Trust.

Section 2.

Amendments, How Effected.

A supplemental Trust Agreement incorporating such proposed amendments shall be prepared by Company and submitted to Trustee for its approval. Upon approval thereof by Trustee and by any officer or body whose approval thereof may be required by law, Company shall mail a notice embodying such proposed supplemental Trust Agreement to each Investor. In the event that Investors holding

at least twenty-five (25%) per cent of the total face amount of all Participating Agreements issued and outstanding at the time of mailing of such notice shall not have delivered to Company within sixty (60) days after the mailing of such notice written dissent in respect of such proposed supplemental Trust Agreement, the Board of Directors of Company shall, within ten (10) days thereafter adopt a further resolution declaring that such proposed supplemental Trust Agreement has thereupon become effective. Company shall thereupon file with Trustee a copy of such resolution duly certified by the Secretary or Assistant Secretary of Company under its corporate seal. Company and Trustee shall execute such supplemental Trust Agreement by their officers thereunto duly authorized and under their corporate seals.

Such supplemental Trust Agreement shall thereupon and thereafter be binding upon Trustee, Company and each and every one of the Investors and the covenants and provisions contained therein shall be deemed to be part of this Trust Agreement."

V.

My attention has been called to the allegation of paragraph 22 of the complaint reading as follows:

"Upon information and belief, in further pursuit of their unlawful conduct, the directors of Insurance Securities, including the director-

defendants, commenced solicitation for proxies for a meeting of investors of the Trust Fund."

The fact is that the resolutions to amend the Amended Trust Agreement in the respects set forth in proposals submitted to the investors and described in the proxy solicitation material were adopted at the meeting of the Board of Directors of ISI held June 26, 1956, attended by the four defendant-directors and eight other directors and that, as stated in my official minutes as Secretary of ISI, the resolutions were moved and seconded by nonstockholder directors and "were adopted by the unanimous affirmative vote of those members of the Board who are not stockholders of the Company, the remaining directors not voting." In my capacity as Secretary of ISI, I have acted in a ministerial manner in sending out the proxy solicitation material. Apart from this clerical act, the director-defendants have not engaged in solicitation of proxies.

/s/ ROY A. HAIGHT.

Subscribed and sworn to before me this 22nd day of August, 1956.

[Seal] /s/ WM. S. WELLS, JR.,
Notary Public in and for the County of Alameda,
State of California.

[Title of District Court and Cause.]

AFFIDAVIT OF D. D. HARRINGTON ON BEHALF OF DEFENDANTS

State of California,
County of Orange—ss.

D. D. Harrington, being first duly sworn, deposes and says:

I am a resident of Amarillo, Texas, and my principal occupation is that of oil and gas producer and investments.

In the month of February, 1956, I purchased 10 shares (now 10,000 shares in view of subsequent split-up) of the capital stock of Insurance Securities, Incorporated, hereafter called "ISI." The transaction was handled through Kaiser & Co., investment bankers of San Francisco, California. Subsequently Kaiser & Co. advised me that it had obtained an option whereby I could purchase additional shares, and in May, 1956, I purchased 11,000 shares more.

In consideration of the fact that the two opportunities to purchase were brought to me by Kaiser & Co., agreements were entered into, on each occasion, between me and Kaiser & Co., whereby Kaiser & Co. received an interest in the proceeds of 20% of said stock and possesses the absolute right to vote 4 shares of ISI stock (now 4,000) as it sees fit but no voting rights with respect to the rest of the shares.

In July, 1956, I agreed with said Kaiser & Co. to purchase an additional 16,000 shares of ISI from Abe P. Leach. This transaction has not yet been consummated. In connection therewith I have an agreement with Kaiser & Co., similar to the one described above, whereby Kaiser & Co. will have a 20% interest in said stock and will be entitled to vote 20% of said shares, when acquired, as it sees fit.

I do not have any understanding, arrangement or contract with Kaiser & Co., Leland M. Kaiser or with anyone else who owns any ISI stock or possesses any beneficial interest therein, or anyone at all, concerning ISI stock or the voting thereof or any purchase and sale thereof to be made hereafter. I am not affiliated with anyone in respect of any ISI stock, and I am not part of any group owning or possessing any ISI stock or beneficial interest therein other than the relationship stated above with Kaiser & Co. I am free to exercise my own individual judgment with respect to voting my ISI stock or interest therein, and intend to do so at all times.

/s/ D. D. HARRINGTON.

Subscribed and sworn to before me this 21st day of August, 1956.

[Seal] /s/ MARGUERITE ERRECARTE,
Notary Public in and for the County of Orange,
State of California.

[Title of District Court and Cause.]

AFFIDAVIT OF JOHN D. MURCHISON ON BEHALF OF DEFENDANTS

State of New Mexico,
County of Santa Fe—ss.

John D. Murchison, being first duly sworn, deposes and says: I am a resident of Dallas, Texas, and at all times herein mentioned have been and am the President of Life Companies, Incorporated, a Virginia corporation, hereafter called "Life." A majority of the capital stock of Life is owned by Murchison Bros., a partnership of which I am a general partner. Life is the owner of substantially all the capital stock of Atlantic Life Insurance Co., a Virginia corporation, hereafter called "Atlantic," and Lamar Life Insurance Co., a Mississippi corporation, hereafter called "Lamar." Life also owns all the voting stock of Latmarco, Incorporated, hereafter called "Latmarco." The voting stock of Latmarco constitutes 40% of its capitalization. The remaining 60% of Latmarco's capitalization is represented by non-voting stock owned by Kaiser & Co., Investment Bankers of San Francisco, California.

In February, 1956, in my capacity as Executive Officer of Life, I caused Atlantic, Lamar and Latmarco to buy 10 shares each of the capital stock of Insurance Securities Incorporated, hereafter called "ISI" (now 10,000 shares in view of split-up). The transaction was handled through said Investment Bankers, Kaiser & Co.

Neither Life, Atlantic, Lamar, Murchison Bros., nor any partner thereof, have any understanding, arrangement or contract with anyone else who owns any stock of ISI or possesses any beneficial interest therein concerning ISI stock or the voting thereof or the purchase and sale thereof. None is affiliated with anyone else in respect of any ISI stock or constitutes part of any group owning or possessing any ISI stock or beneficial interest therein other than the relationship shown above with Latmarco which arises by virtue of Life's ownership of Latmarco stock. Latmarco has an agreement with Kaiser & Co. whereby the latter is entitled to vote, as Kaiser & Co. sees fit, 60% of the ISI stock owned by Latmarco. Other than Latmarco's affiliation with Murchison Bros., Life, Atlantic and Lamar through Life, and other than the contractual relation mentioned above between Latmarco and Kaiser & Co., Latmarco has no understandings, arrangements, or contracts with anyone concerning said stock or anyone else, the voting thereof, or the purchase or sale thereof, and is not affiliated with anyone and does not constitute part of any group having any relation to ISI stock.

/s/ JOHN D. MURCHISON.

Subscribed and sworn to before me this 20th day of August, 1956.

[Seal] /s/ IRENE KERSHNER,
Notary Public in and for the County of Santa Fe, State of New Mexico.

My commission expires October 7, 1958.

[Title of District Court and Cause.]

AFFIDAVIT OF S. W. RICHARDSON ON BEHALF OF DEFENDANTS

State of California,
County of San Diego—ss.

S. W. Richardson, being first duly sworn, deposes and says:

I am a resident of Fort Worth, Texas, and I am engaged individually in various enterprises and in making various investments. I am also a partner with Perry R. Bass in a co-partnership of Richardson & Bass, engaged in oil drilling ventures.

In the month of May, 1956, Richardson & Bass purchased 21 shares (now 21,000 shares in view of subsequent split-up) of the capital stock of Insurance Securities Incorporated, hereafter called ISI. The transaction was handled through Kaiser & Co., investment bankers of San Francisco, California. Shortly afterwards Richardson & Bass transferred 10,000 of the shares to Perry R. Bass and 11,000 shares to me, and said ISI shares ceased to be owned by the partnership of Richardson & Bass.

In consideration of the fact that the option to purchase, on the basis of which the acquisition was made, belonged to Kaiser & Co., an agreement was entered into between me and Kaiser & Co. whereby the latter received an interest of 20% in said 11,000

shares and possesses the absolute right to vote 2200 shares of ISI stock as it sees fit.

Apart from this agreement with Kaiser & Co., I do not have any understanding, arrangement or contract with Kaiser & Co., Leland M. Kaiser, Perry R. Bass, or with anyone else who owns any ISI stock or possesses any beneficial interest therein, or anyone at all, concerning ISI stock or the voting thereof or any purchase and sale thereof to be made hereafter. I am not affiliated with anyone in respect of any ISI stock, and I am not part of any group owning or possessing any ISI stock or beneficial interest therein other than the relationship stated above with Kaiser & Co. I am free to exercise my own individual judgment with respect to voting my ISI stock, or interest therein, and intend to do so at all times.

/s/ S. W. RICHARDSON.

Subscribed and sworn to before me this 21st day of August, 1956.

[Seal] /s/ JEANNE W. HART,
Notary Public in and for
Said County and State.

My commission expires June 20, 1958.

[Title of District Court and Cause.]

AFFIDAVIT OF PERRY R. BASS ON BEHALF OF DEFENDANTS

State of Texas,
County of Tarrant—ss.

Perry R. Bass, being first duly sworn, deposes and says:

I am a resident of Fort Worth, Texas, and I am engaged individually in various enterprises and in making various investments.

In May, 1956, I became the owner of 10,000 shares of the capital stock of Insurance Securities Incorporated, hereafter called ISI.

In consideration of the fact that the transaction, on the basis of which the acquisition was made, originated through Kaiser & Co., investment bankers, an agreement was entered into between me and Kaiser & Co. whereby the latter received an interest in 20% of said 10,000 shares and possesses the absolute right to vote 2,000 shares of ISI stock as it sees fit.

Apart from this agreement with Kaiser & Co., I do not have any understanding, arrangement or contract with Kaiser & Co., Leland M. Kaiser, S. W. Richardson, or with anyone else who owns any ISI stock or possesses any beneficial interest therein, or anyone at all, concerning ISI stock or the voting thereof or any purchase and sale thereof to be made hereafter. I am not affiliated with anyone in respect of any ISI stock, and I am not part of any group

owning or possessing any ISI stock or beneficial interest therein other than the relationship stated above with Kaiser & Co. I am free to exercise my own individual judgment with respect to voting my ISI stock, or interest therein, and intend to do so at all times.

/s/ PERRY R. BASS.

Subscribed and Sworn to Before Me this 23rd day of August, 1956.

[Seal] /s/ DORA NEELY,
Notary Public in and for
Tarrant County, Texas.

State of Texas,
County of Tarrant—ss.

Before me, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Perry R. Bass, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this, the 23rd, day of August, 1956.

[Seal] /s/ DORA NEELY,
Notary Public in and for
Tarrant County, Texas.

Receipt of copy acknowledged.

[Endorsed]: Filed August 24, 1956.

[Title of District Court and Cause.]

PLAINTIFF'S REPLY TO DEFENDANTS' REQUEST FOR ADMISSIONS OF FACT

Plaintiff believes that the subject matter set forth in defendants' Request for Admissions of Fact is not relevant to the causes of action set forth in the complaint and the amendment thereto, both filed on August 13, 1956, and without conceding the relevance thereof states as follows:

1. Plaintiff admits that paragraph I of the Request for Admissions of Fact sets forth the statement issued by Chairman J. Sinclair Armstrong, which statement is part of Litigation Release No. 1007, dated August 13, 1956, but further states that the Chairman's public statement was issued after the filing of the complaint and the amendment thereto and in response to an appeal by Leland M. Kaiser, who indicated in substance that public knowledge of the Commission's action might cause anxiety and misapprehensions among investors in the Trust Fund and might precipitate substantial redemptions which the Trust Fund would be forced to meet through liquidation of portfolio and that such forced liquidations might result in losses to the Trust Fund and to investors in the Trust Fund. A copy of the full text of the Commission's Release is attached hereto.

2. Plaintiff does not contend and charge in its complaint that "any defendant has mismanaged or misappropriated any assets of the Trust Fund" in

the sense that the Commission does not charge defendants with improper investment practices and policies resulting in investment losses, or with larceny, theft or embezzlement or acts of a similar character. Plaintiff further states that neither this statement nor the Chairman's statement is intended to modify or alter in any way the allegations set forth in the Commission's verified complaint filed on August 13, 1956, and more particularly paragraphs 20 and 21 thereof.

/s/ THOMAS G. MEEKER,
General Counsel;

/s/ AARON LEVY,
Attorney;

/s/ F. E. KENNAMER, JR.,
Attorney, Securities and
Exchange Commission.

Dated: August 27, 1956.

Securities and Exchange Commission
Washington 25, D. C.

The Securities and Exchange Commission announced today that it had filed a complaint in the United States District Court for the Northern District of California alleging that Insurance Securities, Inc., and Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan and Roy A. Haight, its officers and directors, have transferred control of that company

and the management and underwriting contracts with Insurance Securities, Inc., Trust Fund in contravention of certain fiduciary standards under the Investment Company Act of 1940.

The sole business of Insurance Securities, Inc., is as sponsor, depositor, investment adviser and principal underwriter of the Trust Fund, a mutual fund with $215,000,000 of assets, whose Participation Certificates are held by the public. In connection with the filing of the action, Chairman J. Sinclair Armstrong of the Commission issued the following statement:

> "The investors in the Trust Fund, managed and sponsored by Insurance Securities, Inc., should not be injured in any way whatsoever by the action taken today by the Securities and Exchange Commission. The suit brought by the Commission is intended to assure to investors legal protection which the Commission believes was intended by the Congress in the Investment Company Act of 1940. We want to emphasize that the action does not concern the investments in insurance stocks nor the portfolio of the Trust Fund, nor the manner in which Insurance Securities, Inc., has managed the funds invested in Trust Fund.
>
> "The complaint does not allege that the defendants have mismanaged or misappropriated any of the assets of the Trust Fund. The filing of the complaint is not intended to disturb

the value of investments in the Trust Fund which as of December 31, 1955, totaled about $215,000,000."

The Commission's complaint alleges that certain controlling stockholders of the sponsor company, Insurance Securities, Inc., sold their stock interests to a small group of purchasers at a price which was $4,240,000 in excess of the book value of such stock. It is alleged that this transfer of control constituted an assignment of the investment advisory and underwriting contracts, which under the Act automatically constituted a termination of such contracts; that the right to enter into new contracts belonged to the Trust Fund and its certificate holders, along with any profits to be derived from the making of such contracts; and that the purported to transfer could not properly be effected by the individual defendants, who stand in a fiduciary relationship to the Trust Fund and accordingly may not themselves profit by such transfer.

The Commission seeks a court order pursuant to Section 36 of the Investment Company Act enjoining Insurance Securities, Inc., from acting as principal underwriter and investment adviser for the Trust Fund, and an accounting for any profits made by certain of its stockholders, officers and directors through their sale of a controlling interest in Insurance Securities, Inc.

The Commission is represented in the action by Thomas G. Meeker, its General Counsel, and Aaron

Levy and Franklin E. Kennamer, Jr., Commission attorneys.

Litigation Release No. 1007.
August 13, 1956.

Duly verified.

Proof of service attached.

[Endorsed]: Filed August 29, 1956.

[Title of District Court and Cause.]

SECOND INTERLOCUTORY ORDER

The Securities and Exchange Commission having filed in this action a motion for a preliminary injunction, and the defendants having moved to dissolve the Interlocutory Order entered by this Court on August 14, 1956, and for other and further relief, and upon the consent of the parties hereto,

It Is Ordered as follows:

1. That the Interlocutory Order entered on August 14, 1956, is hereby dissolved, and the motion for a preliminary injunction is withdrawn;

2. That the dissolution of the Interlocutory Order, as provided in paragraph 1 hereof, is subject to the following conditions, upon which the plaintiff and the defendants have agreed:

a. Pending a final determination of this action, the proxies of investors in the Trust Fund shall not

be voted on the adjourned day of the meeting of investors in the Trust Fund, nor at any time thereafter, for the election of Abe P. Leach and Roy A. Haight as directors of the Trust Fund;

b. Pending a final determination in this action, the defendants Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan and Roy A. Haight shall not serve as directors of the Trust Fund, or in a similar capacity;

c. Pending a final determination in this action, if dividends are declared by Insurance Securities Incorporated, the dividends on the stock owned or held directly, beneficially or otherwise, by the defendants Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan and Roy A. Haight, if paid, shall be segregated and withheld by Insurance Securities Incorporated;

d. Pending a final determination in this action, the remuneration provided for the defendants and other directors who are also officers of Insurance Securities Incorporated shall not be increased, provided that the remuneration of any officer may be increased to the extent of any decreases in the remuneration of any other officer or officers;

e. Pending a final determination in this action, the defendants Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight, and Abe P. Leach with respect to 1,000 shares, shall not sell, or engage to sell, their remaining stock interests in Insurance Securities Incorporated;

3. That the order herein shall be without prejudice to the power and jurisdiction of the Court to grant any and all relief, to the extent appropriate, sought by the plaintiff and deemed by the Court equitable and just, including any action with respect to the Investment Advisory and Principal Underwriting Contracts, whether or not approved by Investors in the Trust Fund, if it is determined in a final decree that plaintiff is entitled to judgment;

4. That defendants' motion to dismiss the complaint and for other and further relief is hereby continued to Friday, 10:00 a.m., November 2, 1956.

/s/ LOUIS E. GOODMAN,
United States District Judge.

Dated: August 30th, 1956.

The parties hereto stipulate to the entry of the foregoing order:

/s/ AARON LEVY,
Securities and Exchange Commission, Washington 25, D. C.;

/s/ F. E. KENNAMER, JR.,
Securities and Exchange Commission, 821 Market Street, San Francisco 3, California, Counsel for Plaintiff.

/s/ MOSES LASKY,

/s/ PHILIP S. ERLICH,

/s/ ALFRED JARETZKI, JR.,

/s/ ELWOOD MURPHEY,
Counsel for Defendants.

[Endorsed]: Filed August 30, 1956.

[Title of District Court and Cause.]

ANSWER OF SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS AND FOR SUMMARY JUDGMENT

The Securities and Exchange Commission, plaintiff herein, opposes defendants' motions to dismiss and for summary judgment on the ground that the motions are without merit and that the factual issues raised by the defendants are not subject to disposition on motion.

Attached hereto are the following affidavits: (1) The Affidavit and Supplemental Affidavit of Jack I. Elias; (2) the Affidavit of Lawrence M. Greene; and (3) the Affidavit of Charles H. Eisenhart.

An accompanying memorandum of law is also submitted herewith.

Dated: October 23, 1956.

/s/ THOMAS G. MEEKER,
General Counsel;

/s/ AARON LEVY,
Special Counsel, Securities and Exchange Commission;

/s/ F. E. KENNAMER, JR., A.L.
Attorney, Securities and Exchange Commission.

[Title of District Court and Cause.]

AFFIDAVIT

Washington,
District of Columbia—ss.

Jack I. Elias, being duly sworn on his oath according to law, deposes and says:

(1) I am employed as a Financial Analyst and Attorney by the Securities and Exchange Commission and assigned to its Division of Corporate Regulation;

(2) Said Division of Corporate Regulation is charged with the administration of the regulatory provisions of the Investment Company Act of 1940;

(3) My duties as Financial Analyst and Attorney relate primarily to the examination and review of documents filed under the Investment Company Act of 1940 to determine compliance with the applicable provisions of said Act and the Rules and Regulations promulgated thereunder;

(4) On July 2, 1956, Insurance Securities Incorporated sponsor, principal underwriter and investment adviser of the Trust Fund, an open-end diversified management company registered under the Investment Company Act of 1940, filed with the Commission preliminary proxy material pursuant to Section 20 (a) of the Investment Company Act of 1940 and Regulation X-14 under the Securities Exchange Act of 1934 in connection with a special meeting of Investors Holding Participating Agree-

ments in the Trust Fund to consider and act upon, among other things, proposals to amend the Amended Trust Agreement, as amended and supplemented, to reinstate the Principal Underwriting Contract and the Investment Advisory Contract with Insurance Securities Incorporated;

(5) Upon examination of the proxy material, I noted the following statement:

> "Upon consummation of this sale, the old stockholders of the Company, being those who have held stock for over 16 years, will hold less than a majority of its shares, to be precise 45.78% thereof, and the Company is advised that this change in majority ownership may be considered an assignment of the contract between the owners of the Trust Fund and the Company concerning matters of Investment Advisory and Principal Underwriting, as defined in the Investment Company Act of 1940. Under the terms of such contract and such Act, a termination of the contract takes place upon its assignment."

(6) It appeared to me that in connection with the transfer of the controlling stock of Insurance Securities Incorporated a question should be raised whether there was an assignment of the investment advisory and underwriting contracts for a consideration in contravention of the principles enunciated in the Commission's General Counsel's Opinion dated May 11, 1942 (Investment Company Act Release No. 354).

(7) Said Opinion of the General Counsel states, in effect, that the receipt of consideration for the purported assignment of an investment advisory contract constitutes gross misconduct and gross abuse of trust subject to Commission action under the provisions of Section 36 of the Investment Company Act of 1940.

(8) Resolution of the problem thus raised required additional information concerning the transfers of stock of Insurance Securities Incorporated not disclosed in the proxy statement.

(9) I orally advised the Division of Corporation Finance that we intended to raise the Section 36 problem with the company and to request additional information.

(10) Said Division of Corporation Finance adverted to this problem in its letter of deficiencies dated July 10, 1956, a copy of which is attached hereto as Exhibit I sent via air mail to the company, as follows: "We understand that our Division of Corporate Regulation has raised certain questions regarding the assignment of the Investment Advisory and Underwriting Contracts."

(11) On or about July 13, 1956, I telephoned Mr. R. A. Haight, Secretary of Insurance Securities Incorporated at their offices in Oakland, California. Mr. Haight acknowledged receipt of the aforementioned letter of the Division of Corporation Finance and had noted the reference therein to the assignment problem. I discussed the Section 36 problem

and requested the following information which I explained was necessary to a resolution of the problem:

(a) Full details with respect to (1) the transactions whereby Kaiser & Co., Latmarco Incorporated, Lamar Life Insurance Company, Atlantic Life Insurance Company and D. D. Harrington acquired their present holdings of the stock of Insurance Securities Incorporated; and (2) the pending sale by Mr. Abe Leach of his present holdings.

(b) In connection with the foregoing, the information particularly desired was the identity of the transferors; the prices assigned to the stock transferred, how computed; the book value of the stock as of the transfer date or dates; and whether any value was assigned to the investment advisory and/or underwriting contracts.

(c) Copies of the balance sheets of Insurance Securities Incorporated as of December 31, 1954; June 30, 1955; December 31, 1955, and June 30, 1956.

(12) The mailing of the proxies by Insurance Securities Incorporated was also discussed. I told Mr. Haight that the decision with respect to the mailing of the proxies was up to the management of Insurance Securities Incorporated. I further advised Mr. Haight that the matter of mailing the proxy material should be considered in the light of the Section 36 problem we had raised and that if there was a mailing before we had studied the matter, they would have to assume the risk that the

Commission may resolve the problem adversely to them.

(13) I also informed Mr. Haight that our files contained a memorandum of a conference held on September 20, 1955, in the offices of the Commission at which Edward Murphey, a director of Insurance Securities Incorporated and also a partner of a law firm which performs legal services for the company, and William Bowen were present. According to the memorandum, the legal consequences under the Act of the transfer of controlling stock of Insurance Securities Incorporated was explored. I particularly noted the statement in the memorandum that since no definite proposal was made, it was suggested that if some sales program develops inquiry should be made to the Commission as to whether such program under given circumstances would be considered as contravening the principles stated in Investment Company Act Release No. 354. I stated that to my knowledge the preliminary proxy material constituted the first notice that any program for the sale of the stock of Insurance Securities Incorporated had been formulated.

(14) Mr. Haight agreed to furnish the material requested.

(15) On or about July 18, 1956, Mr. Alfred Jaretski, Jr., of the law firm of Sullivan & Cromwell informed me by telephone that he was counsel for Insurance Securities Incorporated in this matter and any further discussion concerning the as-

signment problem should be addressed to him. He also informed me that Mr. Haight was assembling the information I requested and that it would be mailed to me soon.

(16) Mr. Jaretski and I discussed the assignment problem briefly and he indicated his disagreement with the General Counsel's Opinion of May 11, 1942, referred to hereinbefore. He further expressed the opinion that the transfers of stock of Insurance Securities Incorporated under review did not contravene the principles of said General Counsel's Opnion of May 11, 1942.

/s/ JACK I. ELIAS,
Securities and Exchange
Commission.

Subscribed and sworn to before me on this 11th day of August, 1956.

[Seal] /s/ CARL J. BIRCKNER,
District of Columbia.

My commission expires April 14, 1959.

EXHIBIT I.

Air Mail. July 10, 1956.

Mr. R. A. Haight, Secretary,
Insurance Securities Incorporated,
2030 Franklin Street,
Oakland 12, California.

Re: File No. 811-87.

Dear Sir:

On the basis of information now available, we have the following comments with respect to the preliminary proxy soliciting material (received July 2, 1956) for the meeting of investors on August 15, 1956.

The procedure specified by the statute of California with respect to revocation of proxies should be stated under "Voting of Proxies" (first page), pursuant to item 1 of regulation X-14.

The second paragraph on the second page should be revised to state that a majority of the directors not parties to the contract will have the power to approve the contract, as provided by section 15 (c) of the Investment Company Act of 1940.

The information required by item 5 (b) with respect to the record date should be included.

The fifth paragraph on the last page should be expanded to include a brief outline of the dissenters rights, as required by item 2. Since it appears that such rights may be exercised only within a limited

time after the date of adoption of the proposals (60 days after mailing of the notice) a statement whether the persons solicited will be notified of such date should also be included.

It is suggested that consideration be given to furnishing to those persons solicited who became Investors since the mailing of the issuer's annual report to investors a copy of such annual report.

We understand that our Division of Corporate Regulation has raised certain questions regarding the assignment of the Investment Advising and Underwriting Contracts.

It is assumed that appropriate revision of the issuer's 1933 Act registration statement will be made to reflect the results of the meeting.

Very truly yours,

CHARLES H. EISENHART,
Assistant Director, Division
of Corporation Finance.

[Title of District Court and Cause.]

SUPPLEMENTARY AFFIDAVIT OF JACK I. ELIAS

Washington,
District of Columbia—ss.

Jack I. Elias, being duly sworn on his oath according to law, deposes and says by way of supple-

menting his previous affidavit dated August 11, 1956:

I.

1. I have read the affidavit of Roy A. Haight, Secretary of ISI, filed on behalf of the defendants herein. Mr. Haight states in his affidavit:

> "I asked Mr. Elias whether I was free to mail the proxy solicitation material or whether there was anything in the telephone call which affected my doing so. Mr. Elias did not at any time state, suggest or intimate that, in order to avoid a charge of being false or misleading, the proxy solicitation material should contain any reference to the so-called Section 36 problem or the facts connected therewith."

This is not inconsistent with the statement in my affidavit of August 11, 1956, filed herein, that "The mailing of the proxies by Insurance Securities Incorporated was also discussed. I told Mr. Haight that the decision with respect to the mailing of the proxies was up to the management of Insurance Securities Incorporated. I further advised Mr. Haight that the matter of mailing the proxy material should be considered in the light of the Section 36 problem we had raised and that if there was a mailing before we had studied the matter they would have to assume the risk that the Commission may resolve the problem adversely to them."

2. The information requested in my telephone conversation with Mr. Haight on July 12, 1956, was

necessary to a determination of whether Commission action pursuant to Section 36 of the Act should be instituted.

3. The Commission's official records show that the information requested of Mr. Haight in the telephone conversation of July 12, 1956, was set forth in a memorandum attached to a letter dated July 24, 1954, signed by Alfred Jaretzki, Jr., which was received in the mail by the Commission on July 25, 1956. The Commission's records also show that the definitive proxy solicitation material was mailed by ISI on or about July 17, 1956.

4. That memorandum stated, among other things, (a) the sales price of $50 per share for the stock of ISI sold by the defendants, (b) that Leland Kaiser arranged the purchases of the ISI stock from the defendants, and (c) the arrangements respecting the distribution of the stock among the purchasers, all of which information was vital and relevant to the staff determination to recommend to the Commission the institution of the Section 36 proceedings against the defendants herein.

II.

5. A letter dated January 25, 1956, between Kaiser & Co. and C. W. Murchison, a copy of which is attached hereto as Exhibit A, which was made available to the Commission subsequent to the filing of the complaint in the proceedings herein, discloses, among other things:

(a) Kaiser & Co. proposed to Mr. Murchison that the 40 shares of ISI (subsequently reclassified into 40,000 shares) representing 24.0964% of the shares then outstanding on which Kaiser & Co. had an option to purchase, be acquired as a joint venture with Kaiser & Co. contributing the option and certain expenses and the other parties contributing the cash price, although it was suggested that it was "preferable to purchase the shares in blocks of 10 each in 4 separate, unrelated accounts, * * *"

(b) It was further suggested that parties to the joint venture be corporations because of tax considerations.

(c) That any party may terminate joint venture arrangement by presenting a bona fide purchaser for the stock subject to the right of the other parties to meet such offer.

III.

6. Subsequent to the filing of the complaint by the Commission in the proceedings herein, a copy of a letter dated February 17, 1956, addressed to Abe P. Leach and signed by Leland M. Kaiser was made available to the Commission. Said letter purported to exercise an option previously granted Kaiser & Co. to purchase 8 shares of ISI (8,000 shares subsequent to stock split by ISI) owned by Mr. Leach at a price of $50,000 per share. Said letter contains the following paragraph:

> "You agree that so long as you shall remain, or ceasing to be, if you shall again become, a

director or stockholder of the company, you will exert your best efforts (i) to cause Leland M. Kaiser and William H. Bowen to be elected to the Board of Directors of the company, (ii) to cause the company to employ Leland M. Kaiser, so long as he shall be qualified, on a part-time basis as a Vice-President and member of the Executive Committee at an annual salary of $24,000 for a period of one and one-half (1½) years from Closing Date, (iii) to keep and maintain the present dividend policy of the company, and (iv) for a period of three years from Closing Date or such other period as may be mutually agreeable, to vote salary increases for only such officers or employees of the company as do not presently occupy the four principal and highest salaried positions of President, Vice-President and Treasurer, Secretary, and Vice-President of the company."

7. Copies of similar letters dated February 17, 1956, addressed to Roy A. Haight and A. J. Lonergan, purporting to exercise options theretofore granted Kaiser & Co. to purchase 8 shares (8,000 shares after the stock split) of ISI from each of the foregoing persons at $50,000 per share were also furnished the Commission. Each of said letters contains the identical statement quoted above from the letter to Leach from Kaiser.

8. Subsequent to the filing of the complaint herein, copies of letters signed by Leland M. Kaiser

addressed to Messrs. Leach, Lonergan and Carr, defendants herein, were furnished to the Commission at its request. The letter of Mr. Leach carries a blank April, 1956, date and there is no indication of Mr. Leach's written acceptance thereof. The letter to Mr. Lonergan is dated April 25, 1956, and contains Mr. Lonergan's written acceptance as of the same date. The letter addressed to Mr. Carr carries a blank April, 1956, date but contains Mr. Carr's written acceptance dated April 25, 1956. Each of said letters contains an identical opening paragraph as follows:

> "The undersigned, acting herein individually and as a member of the partnership firm of Kaiser & Co. and as agent and representative for other parties, hereby notifies you that he desires to, and does hereby, exercise the option dated March 27, 1956, granted to the undersigned by you to purchase from you five (5) shares of the common capital stock (hereinafter called the "Company") upon and subject to the terms, conditions and provisions heretofore agreed upon and hereinafter set forth."

9. Also furnished to the Commission at its request subsequent to the filing of the complaint herein is a copy of a specimen unsigned letter addressed to Leland M. Kaiser and dated March 27, 1956, reproduced in full below:

Copy

March 27, 1956.

Mr. Leland M. Kaiser,
c/o Kaiser & Co.,
1500 Russ Building,
San Francisco 4, California.

Dear Mr. Kaiser:

The undersigned hereby grants to you the right to purchase from him, on or before May 3, 1956, ... shares of the common capital stock of Insurance Securities Incorporated at $50,000 per share, subject to the following conditions:

1. You agree that under no circumstances will you purchase for your own account more than 24¾% of such optioned shares, or of the total outstanding shares of Insurance Securities Incorporated, it being our understanding that this option is being obtained by you for the purpose of effecting distribution of more than 75% of said optioned shares among another purchaser or purchasers.

2. You agree than any purchaser or purchasers to whom you may assign the right to purchase all or any part of such optioned shares shall not as a result of such purchase hold individually a beneficial interest in, or a right to vote more than, 24¾% of the voting shares of Insurance Securities Incorporated.

Very truly yours,

.....

IV.

10. The prospectus of the Trust Fund dated as of October 15, 1955, filed with the Commission and contained in Commission's File No. 2-11021-1, states as follows on page 14:

> "The Board of Directors of Insurance Securities Incorporated is composed of eleven members. As the Trust Fund has no officers or Board of Directors the officers and directors of Insurance Securities Incorporated render their services to the Trust Fund. Their only compensation, for services in connection with the Trust Fund, is paid by Insurance Securities Incorporated out of the fees allowed the company. They receive no compensation from the Trust Fund directly."

11. Similar statements are contained in the Trust Fund's prospecti dated April 1, 1955; February 10, 1955; October 1, 1954; August 9, 1954; on file with the Commission and contained in Commission's File No. 2-11021-1.

/s/ JACK I. ELIAS,
Securities and Exchange
Commission.

Subscribed and sworn to before me on this 23rd day of October, 1956.

[Seal] /s/ NEVA M. BRINKLEY.

My Commission Expires: 12-1-58.

EXHIBIT A

January 25, 1956.

Mr. C. W. Murchison,
5307 East Mockingbird Lane,
Dallas, Texas.

Dear Clint:

Insurance Securities Incorporated ended the year 1955 with a trust portfolio value of $215,500,000. There are 166 shares of stock outstanding.

As you know, we have been working on this matter for over a year and now have an option on 40 shares (24.0964% of the total) at a price of $55,000 per share, although we feel there is a good chance we shall be able to consummate the purchase at $50,000 per share.

It seems preferable to purchase the shares in blocks of 10 each in 4 separate, unrelated accounts, although this is not necessary. Assuming that Kaiser & Co. will have a 20% interest in each such account, as outlined later in this letter, and that for tax reasons the joint account members in each case are corporations (in order to gain the advantage of intercorporate tax rate on dividends), the following results may be anticipated.

The first set of estimates is, in our opinion, considerably lower than either past experience or current accomplishment would seem to justify.

Even though actual sales increased in 1955 at the rate of 87% and since 1950 by 600%, we have, in the interest of conservatism, assumed in the following example that the past spectacular growth rate has terminated and have projected new price of $65,000,000 per annum over the next 10 years compared with $63,000,000 in 1955.

	Corporate Investor	Kaiser & Co.
Original Investment	$ 500,000	‡
Value in 1965 at 14 times earnings	$1,414,000	$353,000
Dividends received in ten-year period*	$ 498,000	$125,000
Cost to amortize investment out of dividends with interest at 4%	$ 513,000	$128,000
Deficiency	$ 15,000	$ 3,000

*At 4% interest, it will require $641,000 to amortize the original $500,000 cost over a 10-year period. After deducting the intercorporate dividend tax, dividends available to meet the interest and amortization would amount to $623,000.

‡Described hereinafter.

The foregoining estimates are based on Projection B on page 17 of our complete report. Details of their derivation are in Appendix A.

A more realistic estimate, in our opinion, is Projection C. This provides for $70,000,000 of sales in 1956 and an annual increase of $5,000,000 in new sales each subsequent year. In the interest of conservatism, it assumes a reduction in the sales charge from 8.85% to 8%. Under such assumptions, results would be as follows:

	Corporate Investor	Kaiser & Co.
Original investment	$ 500,000	‡
Value in 1965 at 14 times earnings	$1,677,000	$419,000
Dividends received in ten-year period*	$ 571,000	$143,000
Cost to amortize investment out of dividends with interest at 4%	$ 507,000	$127,000
Surplus	$ 64,000	$ 16,000

*At 4% interest it will require $634,000 to amortize the original $500,000 cost over a 10-year period. After deducting the intercorporate dividend tax, dividends available to meet the interest and amortization would amount to $714,000.

‡Described hereinafter.

The foregoing estimates are based on Projection C on page 18 of our complete report.

Because of the very great growth which we believe to be inherent in the dynamic mutual fund business generally and ISI in particular, we think it only fair to point out that in our opinion there are many reasons to expect actual results to conform more closely to Projection E on page 18 of our complete report. This assumes $75,000,000 of sales in 1956, which is an increase of only 21% over 1955, as against 1955's 87% increase over 1954. Further, it assumes a $10,000,000 per annum sales increase in each subsequent year. Then in the interest of conservatism, it assumes a reduction in the sales charge from 8.85% to 7%, although no such decrease appears imminent at this time. Under these assumptions, results would be as follows:

	Corporate Investor	Kaiser & Co.
Original investment	$ 500,000	‡
Value in 1965 at 14 times earnings	$1,826,000	$457,000
Dividends received in ten-year period*	$ 624,000	$156,000
Cost to amortize investment out of dividends with interest at 4%	$ 502,000	$125,000
Surplus	$ 122,000	$ 31,000

*At 4% interest it will require $627,000 to amortize the original $500,000 cost over a 10-year period. In this instance, sufficient revenues will become available in less than 9 years to complete the interest and amortization. After deducting the intercorporate dividend rate, dividends would amount to $780,000 in the ten-year period.

‡Described hereinafter.

January 25, 1956.

It is proposed that the acquisition of the shares take the form of a joint venture or joint ventures. Kaiser & Co. will contribute its option, and the time and expense including, but not limited to, legal fees, travel and telephone costs, which it has incurred in working on the matter, to the joint venture or ventures. The other party, or parties, shall contribute enough cash to exercise the option and acquire their respective interests.

Until such time as the parties other than Kaiser & Co. have been reimbursed from the proceeds of sale of stock, or from dividends thereon, or both, for the actual amount of cash contributed, the net profits derived from the operation of the joint venture shall be apportioned entirely to such other parties. Thereafter, said net profits shall be appor-

tioned 80% to such other parties, and 20% to Kaiser & Co.

If at any time it is decided that the stock is to be sold prior to the recovery of the cost thereof by parties other than Kaiser & Co., then such other parties shall be reimbursed for their unrecouped cost, and any excess thereover shall be apportioned 20% to Kaiser & Co. and 80% to the other parties.

Any party may terminate the arrangement by presenting a bona fide purchaser for the stock subject to the right of the other parties within .... days to meet said offer. The proceeds from such sale shall be distributed as in the preceding paragraph.

I had hoped to see you and Jim together, Clint, but time is running against me. Therefore, I shall appreciate hearing from you at your earliest convenience.

Thanks for your letter, on receipt of which I immediately called Pat Brown. He agrees that a meeting at this time would be pointless.

My best to you,

Sincerely,

KAISER & CO.

LMK:B

[Title of District Court and Cause.]

AFFIDAVIT OF LAWRENCE M. GREENE

Washington,
District of Columbia—ss.

Lawrence M. Greene, being duly sworn, deposes and says:

1. I am an Assistant Director of the Division of Corporate Regulation of the Securities and Exchange Commission. I have immediate supervision of the regulatory functions of the staff of the Commission under the Investment Company Act of 1940. In this capacity it is my responsibility and duty, among other matters, to review the affairs and conduct of registered investment companies and affiliated persons to assure compliance with the Investment Company Act, and to make recommendations to the Director of the Division and to the Commission thereon.

I.

2. (a) On September 20, 1955, Elwood Murphey of Oakland, California, counsel for Insurance Securities Incorporated (ISI), and William H. Bowen, attorney of Dallas, Texas, conferred with me and Frank Field, an attorney in this Division, concerning problems raised as to the position of certain of ISI stockholders. After discussing the amount of stock held by ISI stockholders, and the relationship of that corporation to the Trust Fund, a registered investment company, Mr. Murphey pointed out that Abe P. Leach and Ossian E. Carr,

each of whom held about 18% of stock of ISI, were of advanced age and that consideration was being given either to a sale of their stock or the possible distribution of this stock by their heirs in the event of death.

(b) Mr. Murphey and Mr. Bowen indicated that they were fully aware of the Opinion of the General Counsel of the Commission contained in Investment Company Act Release No. 354, issued by the Commission on May 11, 1942, a copy of which is attached hereto as Exhibit A.

(c) Mr. Murphey and Mr. Bowen advised us that these stockholders of ISI then had no definitive plans for disposing of their shares of stock but that various possibilities were being considered in the light of the General Counsel Opinion. Both Mr. Murphey and Mr. Bowen indicated that the earnings of ISI were so large in relation to its assets that any sales price for the stock of the company based on earnings would obviously represent a consideration by the purchaser for the expectation of earnings from the underwriting and investment advisory services rendered to the Trust Fund. They further indicated their understanding that since these services were performed by ISI, a corporation, the sale of the stock of that corporation might contravene the principles enunciated in the aforesaid General Counsel Opinion if a controlling block were sold by one or more owners to a single person or a group of persons. The discussion encompassed various possible dispositions of stock including the

possibility that Mr. Leach and Mr. Carr would both sell their stock to a single purchaser or group of persons, thus involving an aggregate sale of 36% of the stock of Insurance Securities Incorporated. It was pointed out by us that, since the Investment Company Act provides that 25% of the voting securities of a company constitutes, presumptively, a controlling block of stock (Section 2(a)(9)), such a sale would in our view involve a transfer of control and would constitute an "assignment" under Sections 2(a)(4) and 15(a) and (b) of the Investment Company Act.

(d) Mr. Murphey and Mr. Bowen observed that if one of the stockholders were to try to sell his holdings of 18% alone he would get much less for his stock than if he sold jointly with another stockholder or stockholders and both sold 36% or more of the stock. Our answer to this observation was that realistically this showed the validity of the premise on which the General Counsel Opinion was based.

(e) Mr. Murphey and Mr. Bowen made clear to me in our conference that no actual proposal was being considered. I suggested that if a definite proposal for disposition of the stock developed, inquiry should be made to the Commission as to whether the proposed program would be considered as contravening the principles set forth in the 1942 General Counsel Opinion. I also informed them that the Commission would shortly have to render an opinion on a case which raised the same general problems

which we were discussing; I volunteered to get in touch with them if anything developed as a result of the Commission's review of the matter which could appropriately be discussed with them.

3. At about the time that the foregoing conference was held, I was informed by Commissioner A. Downey Orrick that Mr. Leland M. Kaiser of San Francisco, California, had conferred with him on September 21, 1955, regarding the ISI matter. I advised Commissioner Orrick that another case involving the same general problem would come before the Commission for consideration and that I had advised Mr. Murphey and Mr. Bowen that I would get in touch with them. Commissioner Orrick wrote to Mr. Kaiser, referring to these facts in a letter dated September 23, 1955.

Commissioner Orrick's letter included the following statement:

> "I am informed that Mr. Greene had told Mr. Murphey that another matter involving a similar question will soon be coming before the Commission for consideration and that Mr. Greene stated he would inform Mr. Murphey of the Commission's thinking on that matter."

4. Thereafter Mr. Kaiser sent a letter, dated October 3, 1955, to Commissioner Orrick in which Mr. Kaiser discussed in detail the difficulties that he saw in the 1942 General Counsel Opinion. This letter, attached hereto as Exhibit B, indicates that

Mr. Kaiser was fully aware of the implications of that Opinion, and of its applicability to the sale of a controlling block of ISI stock.

5. Commissioner Orrick acknowledged receipt of Mr. Kaiser's letter on October 13, 1955. Thereafter, on November 10, 1955, I wrote to Mr. Kaiser, referring to his letter of October 3, 1955, and to the similiar problem considered by the Commission in another case to which I had adverted in my conference with Mr. Murphey and Mr. Bowen, and which was mentioned in Commissioner Orrick's letter of September 23, 1955. I advised Mr. Kaiser that the Commission, following the principles enunciated in the 1942 General Counsel Opinion, had reached the conclusion that the receipt of consideration for the purported assignment of an investment advisory contract and an underwriting contract constituted gross misconduct and gross abuse of trust subject to Commission action under the provisions of Section 36 of the Investment Company Act of 1940. While recognizing that personal difficulties were raised by the situation mentioned in Mr. Kaiser's letter, I stated that any substantive departure from the principles laid down in the General Counsel Opinion would create even greater problems contrary to the interest of public investors. A copy of this letter is attached hereto as Exhibit C.

6. Mr. Kaiser acknowledged receipt of my letter on November 15, 1955. A copy of this letter is attached as Exhibit D.

II.

7. On July 25, 1956, I received a telephone call from Mr. Alfred Jaretzki, who asked me whether we had received the information and data which the staff had requested from Mr. Haight on July 12, 1956. I advised him that I had been on vacation and was not familiar with the matter. He stated that he was planning to make a trip to Europe and that if there was anything that the staff wanted in the way of information, or if something were to occur prior to the meeting of investors scheduled for August 15, 1956, he wanted to know. I promised to look into the matter and would call him the following day.

8. After studying the material furnished by Mr. Jaretzski contained in a letter and memorandum dated July 24, 1956, and received by the Commission on July 25, 1956, I telephoned him and discussed with him the questions raised by the sale of ISI stock for $50 per share as set forth in that memorandum. After some discussion between us as to the applicability and merits of the 1942 General Counsel Opinion, I stated to him that I could not advise him as to whether or not the Commission would or would not take any action prior to the meeting to be held on August 15.

Mr. Jaretzki pointed out that there was the possibility that the Commission might wish to take some action with respect to the meeting to be held on August 15, although he emphasized that the sale of 16,000 shares of stock of Investors Securities Incor-

porated held by Mr. Leach was not to be consummated until thirty days later which would give the Commission ample time to take action regarding that transaction. There was some discussion between us as to whether the Commission might wish to enjoin the meeting and I also mentioned the possibility that the Commission might insist that additional proxy material be sent to investors. I said that since the Director of the Division and the General Counsel were out of the City, that I could not give him a definite answer then, but would consult further with the staff and would call him again the following day.

9. On July 27, 1956, I telephoned Mr. Jaretzski and advised him that after further discussions with the staff I could not give him any assurance that the Commission would or would not take action prior to August 15, 1956, the day of the meeting of investors.

/s/ LAWRENCE M. GREENE,
Securities and Exchange
Commission.

Subscribed and sworn to before me on this 23rd day of October, 1956.

[Seal] /s/ NEVA M. BRINKLEY,
Notary Public.

My Commission Expires 12-1-58.

EXHIBIT A

For Immediate Release Monday, May 11, 1942

Securities and Exchange Commission
Philadelphia

Investment Company Act of 1940
Release No. 354

The Securities and Exchange Commission today made public an opinion of its general counsel, Chester T. Lane, to the effect that an investment adviser of a registered investment company cannot legally profit by an attempt to sell his investment advisory contract with the company.

Mr. Lane points out that under Sections 15 (a) and (d) of the Investment Company Act of 1940, investment advisory contracts with registered investment companies are not legally saleable. The opinion goes on to state that, as is recognized by the statute, a fiduciary relation exists between an investment adviser and an investment company. Consequently, the receipt of a consideration for any purported assignment of such a contract will constitute gross misconduct and gross abuse of trust, subject to Commission action under Section 36 of the Act. It is also stated that this principle applies to any situation in which an investment adviser attempts to obtain a consideration for a purported transfer to some third person of his fiduciary obligations toward the stockholders of the registered investment company, irrespective of the form of the particular

transaction, the manner in which the consideration is to be received, or the source of payment.

The opinion points out that an investment adviser's position is similar to that of a trustee, officer or director and that he is under the same disability to sell his trust.

The text of the opinion is as follows:

I understand that a certain registered investment company has a contract calling for investment advisory services from A, a corporation. This contract constitutes substantially all of A's assets. X owns the controlling block of stock of A. B, a corporate investment advisor, is desirous of acting as investment adviser to the investment company. Various proposals have been made with a view toward accomplishing that result.

Under the first proposal X will transfer to B his controlling interest in A for a substantial consideration. Thereafter, a new written investment advisory contract with A, which complies with the requirements of Section 15 (a) of the Investment Company Act, will be made. As an alternative proposal it is contemplated that a contract will be entered into by A and X with B whereby A or X will receive a substantial sum in consideration of their undertaking to terminate the investment advisory contract with the investment company in order to permit B to enter into a new written contract with the investment company.

As a further alternative it is proposed that A and B will merge, the terms of the merger giving X substantial compensation in stock or cash for his interest in A. A new contract with the company resulting from the merger will be entered into by the investment company. Still another proposal is that B will merely undertake to perform the functions of investment adviser under A's contract with the investment company for its duration, while A continues to receive the compensation due thereunder with the understanding that upon the expiration of the contract, a new contract with B will be entered into.

In each case it is intended that the new arrangement will be approved by the directors of the investment company and submitted to the stockholders of that company for approval.

You inquire whether a violation of the Investment Company Act of 1940 will be involved if any of these proposals is effected.

Section 15 (d) of the Investment Company Act in effect provides for the automatic termination of investment advisory contracts made prior to March 15, 1940, upon the assignment thereof after that date. Section 2 (a) (4) of the Act provides that the term "assignment" includes any direct or indirect transfer or hypothecation of a contract or chose in action by the assignor, or of a controlling block of the assignor's outstanding voting securities by a stockholder of the assignor. In my opinion, each

of the various proposals mentioned above would involve an "assignment" within the meaning of the Act of the investment advisory contract which A has with the investment company. Consequently, by reason of Section 15 (d) of the Act, that contract would be automatically terminated upon such assignment, and no person could lawfully purport to act as investment adviser thereunder.

The legislative history of Section 15 manifests a clear Congressional intention to prevent all trafficking in investment advisory contracts and to prevent an investment adviser from transferring his fiduciary obligations by turning over the management of the stockholders' money to a different person. That intention is effectuated by the requirement in Section 15 (a) that every investment advisory contract made after March 15, 1940, must provide for its automatic termination upon assignment. Section 15 (d) provides that contracts made before March 15, 1940, also terminate upon assignment.

Thus, Congress has said that an investment adviser cannot assign his contract and cannot transfer his fiduciary obligations. In the light of these prohibitions, and in the light of the fiduciary relationship which exists between an investment adviser and the company which he serves, it is my opinion that an investment adviser who directly or indirectly attempts to obtain a consideration for the purported transfer of his contract is guilty of gross misconduct and gross abuse of trust subject to Commission action under Section 36 of the Act. This

principle applies to any situation which in substance represents an attempt by an investment adviser to profit by a purported sale of his fiduciary obligations, irrespective of the form of the particular transaction involved, the manner in which the consideration is to be received or the source of payment. In my opinion the legal status of an investment adviser is similar to that of a trustee of a trust or a director or officer of a corporation, and the investment adviser is under the same prohibitions against selling his trust.

Looking through the form of the alternative proposals which you have described to their substance, it is my view that A would in each case be guilty of gross misconduct and gross abuse of trust.

EXHIBIT B

Kaiser & Co.
Investment Bankers
Russ Building
San Francisco 4

October 3, 1955.

Mr. Andrew Downey Orrick, Commissioner,
Securities & Exchange Commission,
425-2nd Street, N.W.,
Washington, D. C.

Dear Mr. Orrick:

Your letter of September 23 relating to our recent conversation in Washington is much appreciated. Not knowing the facts in the matter which you state will soon be before the Commission, I, of course, have no way of estimating whether or not the thinking in that case will shed much light on our problem.

Because of the brief time we were together, and I realize you stretched a point to afford me the opportunity, I was not able to explain more fully my thoughts in connection with the Lane opinion as released in 1942. I have read this opinion and have discussed it with counsel. As I understand the situation, it was the intent of the Legislature (among other things), in adopting Section 15 of the Investment Company Act of 1940, to prevent trafficking in investment advisory contracts and to prevent an investment adviser from transferring his fiduciary obligations. Mr. Lane considers the sale of a controlling stock interest in a company holding an investment advisory contract as the equivalent of the sale of the investment advisory contract and as such, a gross breach of the seller's fiduciary obligations to the investors. It is my understanding that the technical staff believes that the same principle is applicable to underwriting contracts where the same company controls the underwriting contract and the investment advisory contract. Mr. Lane compares the investment adviser to a Trustee of a trust or a Director or officer of a corporation and

states that all are under the same prohibitions against selling their "trusts."

I am in accord with the position that the Commission should retain some control over the transfer of investment advisory contracts, but it does not seem to me that the Lane Opinion is realistic in the light of present day conditions. It is obvious that any contract for investment advisory service or any contract of an underwriting character is entered into with the expectation that the person performing the required services will be compensated for these services. As investment trusts grow, the sponsor company will grow, with the result that the value of the stock of such company will similarly grow. It is inevitable that in the ordinary course of events, sales will be made and must be made of the stock of sponsor companies. Some such sales will take place as the result of death; others, as an incident to retirement, changes in employment, or orderly estate planning. Such sales are going to be made at market value and if an individual stockholder, or stockholders collectively, cannot sell a controlling interest at value, it will result in the splitting of stockholdings and the sale of stock in small units to a large number of stockholders. This will have the effect of placing the control of investment advisory contracts in the hands of many. It would seem to me that the better procedure on the part of the Commission would be to encourage control of this type of company by persons experienced in the field which would probably require the reten-

tion of such control in a relatively few hands, rather than the widespread holding of such stock.

Further, I do not believe that it is accurate to say in all instances that a contract involving a trust relationship may not be sold or transferred. While there are many situations in which a Trustee may not transfer his obligations, there are numerous situations comparable to the investment adviser situation in which a transfer is permitted. Thus, in the merger of two banks or in the sale of bank stock, there is included in the sale or merger the business done by the Trust Department and, necessarily, the profit derived by the Trust Department from its activities is a material element in the determination of sales price. We have numerous trust and escrow companies in which there is a fiduciary relationship, and yet the free sale of stock is permitted.

Referring to Mr. Lane's own comparison, it is common for a Director or Officer owning a controlling interest in a corporation to sell his stock without claimed breach of a fiduciary duty. It would appear to me that the Commission could exercise a control over the sale of advisory contracts through requirement of technical knowledge and experience on the part of the purchaser without resorting to the strained fiduciary relationship theory.

In the particular company about which I talked with you, the President is 82 years of age and a Vice President 79. It is inevitable, then, that by

reason of age, within the next few years, substantial blocks of the stock of the sponsor company must and will be sold. Their Trust Agreement imposes strict limitations upon the investment adviser and upon the compensation which the management company may receive, and it does not appear to me that there could be any actual abuse of a trustee relationship resulting from a sale of an interest in such company.

I might also point out the inequity of the situation where a shareholder is entitled to sell a 24% interest at a fair market price and yet be required to sell a 25% or 26% interest for a much smaller price.

I have gone into detail in presenting my thoughts in the matter in order that you might have the benefit of these ideas in the discussion which will take place at the hearing mentioned in your letter.

With thanks for your interest in this subject, and my kindest personal regards,

Sincerely,

/s/ LEE KAISER.

LMK:B

EXHIBIT C

(Copy)

Division of Corporate Regulation.

November 10, 1955.

Mr. Leland M. Kaiser,
Russ Building,
San Francisco 4, California.

Re: Kaiser & Co., File No. 132-3.

Dear Mr. Kaiser:

Reference is made to your letter of October 3, 1955, to Commissioner Orrick in which you set forth your views and comments on the question of assignment of investment advisory contracts.

The problem of the legality of the transfer of investment advisory and underwriting contracts for a consideration was fully considered recently by the Commission and the staff in connection with a proposed agreement to transfer control of an investment management company and the corporate principal underwriter for two registered investment companies. This matter was adverted to in Commissioner Orrick's letter of September 23, 1955.

In arriving at its determination regarding the proposed agreement before it, the Commission followed the principles enunciated in the General Counsel's Opinion of May 11, 1942 (Investment Company Act Release No. 354), to the effect that the receipt of consideration for the purported as-

signment of an investment advisory contract constitutes gross misconduct and gross abuse of trust, subject to Commission action under the provisions of Section 36 of the Investment Company Act. The principles set forth in that Opinion were also considered by the Commission to be applicable to the purported transfer of an underwriting contract for a consideration.

The problems raised by you in your letter are necessarily inherent in the situation and create personal difficulties which merit sympathetic consideration. Nevertheless, any substantive departure from the principles mentioned above would create even greater problems contrary to the interests of investors. That is apparent from the legislative history of the statute and the reason for the provisions of Section 15.

In any event, the Commission appreciates your comments and observations. If you have any further questions, please do not hesitate to communicate with me.

Very truly yours,

/s/ LAWRENCE M. GREENE,
Assistant Director.

EXHIBIT D

Kaiser & Co.
Investment Bankers
Russ Building
San Francisco 4

November 15, 1955.

Leland M. Kaiser,
Edwin R. Foley,
Leslie E. Rowell,
Charles R. Burgess.

Mr. Lawrence M. Greene,
Assistant Director,
Division of Corporate Regulation,
Securities and Exchange Commission,
Washington 25, D. C.

Dear Mr. Greene:

Thank you for your letter in which you outline for me the Commission's recent determination relative to transfer of control of an investment management company and the corporate principal underwriter for two registered investment companies.

I am sorry to have missed seeing you while in Washington recently and hope to have the opportunity to meet you on my next visit to your city.

With kindest personal regards,

Sincerely,

/s/ LEE KAISER,

KAISER & CO.

[Title of District Court and Cause.]

AFFIDAVIT OF CHARLES H. EISENHART

Washington,
District of Columbia—ss.

Charles H. Eisenhart, being duly sworn on his oath according to law, declares and says:

(1) I am an Assistant Director in the Commission's Division of Corporation Finance and have been employed in that capacity since October, 1952. Among my functions is the review of proxy soliciting material filed by certain registered investment companies pursuant to Section 20(a) of the Investment Company Act of 1940 (the Act, 15 U.S.C. 80 A-20(a), and Rule N-20A-1 (17 CFR 270.20a-1). The Trust Fund sponsored by Insurance Securities, Incorporated, filed preliminary proxy material on July 2, 1956, which I reviewed.

(2) When proxy soliciting material is filed by a registered investment company the staff of the Division of Corporation Finance examines such material to determine whether all of the basic information specifically required by Regulation X-14 (17 CFR 204.14), applicable to registered investment companies, has been included in the material and whether in the light of Rule X-14A-9 the material contains misleading statements or omits material facts necessary to make the statements made not misleading in the circumstances. The rules are designed to provide an investor with material in-

formation regarding each separate matter with respect to which his vote or consent is sought.

The Division of Corporate Regulation which is charged with the administration of the regulatory provisions of the Act, reviews the material filed by investment companies to determine whether the matters to be acted upon by security holders are in other respects in compliance with the Act and the Rules and Regulations promulgated thereunder. If, in the course of that Division's examination, it is deemed necessary to make comments or to request additional information for inclusion in the proxy material that Division may advise the investment company directly or request our Division to make such comments or to secure the information from the company.

(3) Since the proxy material of investment companies is reviewed by two divisions of the Commission, it is our practice to co-ordinate the processing by both staffs. If the Division of Corporate Regulation has completed its review it will furnish the Division of Corporation Finance with comments to be included along with the latter Division's comments. It is also our practice to limit our comments to matters pertaining to the functions of the Division of Corporation Finance if the other Division has not completed its review and advise the company that the Division of Corporate Regulation has certain questions which have not been determined or resolved.

(4) In the course of our review of the preliminary proxy material filed by Insurance Securi-

ties, Incorporated, on July 2, 1956, in connection with a special meeting of investors holding Participating Agreements in the Trust Fund to be held on August 15, 1956, I was informed by the staff that the Division of Corporate Regulation was considering certain problems with respect to the question of the transfer and assignments of the Investment Advisory and Underwriting contracts, two matters as to which proxies were proposed to be solicited, and the impact of Section 36 of the Act upon such matters.

(5) I was also informed by the staff that on or about July 10, 1956, an inquiry had been received by telephone from a representative of the company asking when our comments would be furnished. Under Rule X-14A-6 proxy statements are required to be filed at least 10 days prior to the date definitive copies of such material are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. The proxy material had been sent by air mail to the Commission on June 29, 1956, and had been received at our office on July 2, 1956. In the letter accompanying the proxy material the company requested that we advise by telegram whether we had any comments and, if so, to forward such comments by air mail.

(6) Having in mind the written request from the company and upon being informed of the telephone request for our comments, I furnished such comments as the Division of Corporation Finance

had at that time and advised the company that certain questions had been raised by our Division of Corporate Regulation which were unresolved. On July 10, 1956, I dispatched a telegram to Mr. R. A. Haight, Secretary of Insurance Securities, Incorporated, as follows: "Proxy Soliciting Material Comments being air mailed today."

(7) On July 10, 1956, I signed the letter of comments which according to our records was air mailed to Mr. Haight on said date.

(8) The aforesaid letter of July 10, 1956, included the following:

> "We understand that our Division of Corporate Regulation has raised certain questions regarding the assignment of the Investment Advisory and Underwriting contracts."

The foregoing statement was intended to advise the recipient of the letter that there remained a problem which, as of the date of the communication, remained undetermined and unresolved.

The aforesaid pragraph was not intended to advise, and did not advise, Mr. Haight that no additional comment would be forthcoming or that the inclusion of additional material would not be requested in the event it became apparent that inquiries being made by the Division of Corporate Regulation made such additional comment or request either necessary or appropriate. Responsibility for compliance with the Commission's proxy

rules rests with the issuer rather than with the staff of the Commission.

/s/ CHARLES H. EISENHART.

Subscribed and sworn to before me on this 17th day of October, 1956.

/s/ NEVA M. BRINKLEY,
Notary Public.

My commission expires: 12-1-58.

[Endorsed]: Filed October 24, 1956.

[Title of District Court and Cause.]

SUPPLEMENTARY AFFIDAVIT OF ROY A. HAIGHT ON BEHALF OF DEFENDANTS

State of California,
County of Alameda—ss.

Roy A. Haight, being first duly sworn, deposes and says:

I am one of the named defendants in the above-entitled cause, and I am now and at all times mentioned have been the Secretary of Insurance Securities, Incorporated, hereafter called I.S.I.

The meeting of investors, referred to in Exhibit B to the complaint herein, was held on August 15, 1956. Proposal No. 1 on the proxy, copy of which is part of said Exhibit B, entitled, "A Proposal to

Provide a Board of Directors to Supervise the Management of the Trust," was adopted by the investors at said meeting and Howard D. Ainsworth, Leland M. Kaiser, Edwin R. Leach, Brayton Wilbur, and Judge A. J. Woolsey were elected as such Directors at such meeting, their terms to begin on the effective date of amendment of the Trust Agreement creating said Board. Proposals 5 and 6 entitled, respectively, "A proposal to reinstate contract as Investment Adviser" and "A proposal to reinstate contract as Principal Underwriter," were not acted upon at that meeting because of this Court's interlocutory order of August 14, 1956, and the meeting was adjourned to September 14, 1956. On the latter date the adjourned meeting of the investors was held, and said proposals 5 and 6 were adopted. Following the vote of the investors adopting said proposals, and on September 17, 1956, the trust agreement by and between I.S.I., Pacific National Bank of San Francisco as trustee, and the investors was amended to reinstate the investment advisory and principal underwriting contract between said trustee, the investors and I.S.I. and to establish a board of trustees referred to as a board of directors of said Trust Fund to supervise its management.

Since September 17, 1956, the directors of said Trust Fund have been Howard D. Ainsworth, Leland M. Kaiser, Edwin R. Leach, Elwood Murphey, Donald B. Rice, Brayton Wilbur and Judge A. J. Woolsey.

Concurrently with their election as directors of the Trust Fund, Edwin R. Leach, Howard Ainsworth, Brayton Wilbur and Judge A. J. Woolsey resigned as directors of I.S.I. Since September 17, 1956, the directors of I.S.I. have been Hon. John J. Allen, Jr., William H. Bowen, Ossian E. Carr, Roy A. Haight, Abe P. Leach, A. J. Lonergan, Elwood Murphey, Donald B. Rice and Leland M. Kaiser.

/s/ ROY A. HAIGHT.

Subscribed and sworn to before me this 12th day of November, 1956.

[Seal] /s/ LEONA L. ALDRIDGE,
Notary Public in and for the County of Alameda, State of California.

My Commission Expires May 25, 1959.

Receipt of copy acknowledged.

[Endorsed]: Filed November 13, 1956.

[Title of District Court and Cause.]

OPINION ON MOTION TO DISMISS

Goodman, District Judge:

The motion to dismiss the plaintiff's complaint involves the question whether the "Investment Company Act of 1940" (54 Stat. 847; 15 USC 80a, et seq.) invests in the plaintiff the right to obtain the relief here sought. This tenders a problem of first impression.

The plaintiff will be referred to as "SEC," the defendant Insurance Securities, Incorporated, as "Service Company" and the defendant "Trust Fund Sponsored by Insurance Securities, Incorporated," and open-end diversified management company, as "Trust Fund."

The complaint discloses that the Trust Fund is an open-end diversified management company, organized under California law, and authorized by Sections 4 and 5 of the Act 15 (USC 80a—4 and 5) and registered with SEC in accordance with Section 8b of the Act (15 USC 806). The Trust Fund purchases insurance securities and sells to public investors, agreements of participation or interest in the Trust Fund's securities. All securities of Trust Fund are held by Pacific National Bank of San Francisco, as Trustee under a trust agreement between it, and Service Company for the benefit of Trust Fund's investors. The Service Company, a California corporation, is the sponsor and investment advisor and principal underwriter of the Trust Fund. The defendants, Leach, Carr, Lonergan and Haight, are directors and officers and principal stockholders of Service Company. Trust Fund has no officers or directors of its own and its management functions have been carried on by Service Company.[1]

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[1]Since the commencement of the action, Trust Fund has, by amendment to its bylaws, authorized the creation of a Board of Directors of its own.

Service Company sells to the public, investment participating agreements in Trust Fund and receives a fee for such service as well as a fee for administering Trust Fund, and for investment advice in connection with the purchase and sale of its securities. Such an arrangement is sanctioned by the Act.[2] The relationship of Service Company and Trust Fund is governed by a trust agreement, which specifies the nature of the obligations of Service Company, its compensation and the reciprocal obligation of Trust Fund to pay for such service. The Act requires,[3] and the trust agreement provides, that the agreement must be approved annually by a majority vote of the investment participation units of Trust Fund.

The relationship above described started in 1938 and has continued since upon a rising arc of volume until, in 1955, the receipts of Service Company from all fees amounted to $4,798,000.

In 1956, the four individual defendants named, supra, whom SEC alleges had the controlling stock interest in Service Company, sold their shares to a group of newcomers headed by defendant Kaiser. Thereupon, Service Company solicited proxies from the investors in Trust Fund to be voted at a meeting of the investors in Trust Fund for the purpose of reaffirming the existing agreement between Service Company and Trust Fund, for the amendment

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[2]Sec. 15 of the Act; 15 USC 80a-15.

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[3]Sec. 15 of the Act; 15 USC 80a-15b-1.

of the bylaws of Trust Fund to provide for the establishment of a board of directors thereof, and for the election of the individually named defendants as directors of Trust Fund.

SEC sought by the complaint to enjoin the holding of the meeting, to enjoin the individually named defendants (except Kaiser)[4] from holding office as directors of Trust Fund, to perpetually debar them from thereafter holding office as directors of Service Company, to enjoin the proposed reinstatement of the contracts between Service Company and Trust Fund, and further that the individually-named defendants be required to account for the profits realized upon the sale of their shares in Service Company, alleged to be approximately $4,240,000 in excess of the net book value of such shares.

SEC claims that the right to this remedy flows from Section 36 of the Act (15 USC 80a—35), in that the officers and directors of Service Company have been guilty of "gross misconduct or gross abuse of trust in respect of the registered investment company for which (they) act."[5]

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[4]Dismissal of the action against defendant Kaiser is separately sought upon the ground that no cause of action is stated against him and that it does not appear that he is a necessary or proper party. We do not discuss this aspect of the motion in view of the disposition made of the whole case.

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[5]Sec. 36. The Commission is authorized to bring an action in the proper district court of the United

SEC contends that the sale by the individually named defendants of a claimed controlling interest in Service Company shares, worked an automatic termination of the contracts between Service Company and Trust Fund. If the sale of the shares by the individually named defendants was a sale of a controlling interest, the SEC is right, for Sec. 15 (a)(4) of the Act provides that any assignment of such contracts automatically terminates the same and Sec. 2(a)(4) of the Act provides that the sale or transfer of a controlling block of the outstanding voting securities of a Service Company is an assignment within the meaning of Section 15(a)(4).

The Court finds it unnecessary to decide the question whether under the complaint's allegations, the

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States or United States court of any Territory or other place subject to the jurisdiction of the United States, alleging that a person serving or acting in one or more of the following capacities has been guilty, after the enactment of this title and within five years of the commencement of the action, of gross misconduct or gross abuse of trust in respect of any registered investment company for which such person so serves or acts:

(1) As officer, director, member of an advisory board, investment advisor, or depositor; or

(2) As principal underwriter, if such registered company is an open-end company, unit investment trust, or face-amount certificate company.

If the Commission's allegations of such gross misconduct or gross abuse of trust are established, the court shall enjoin such person from acting in such capacity or capacities permanently or for such period of time as it in its discretion shall deem appropriate.

sale by the four named individual defendants was a transfer of a controlling stock interest in Service Company, inasmuch as decision on the motion to dismiss will be based upon the fundamental issue as to whether the statute otherwise authorizes this cause or the remedy sought.

The language of Section 36 is clear. The Congress authorized the sort of action here brought if officers or directors of an investment advisor are guilty of gross misconduct or gross abuse of trust in respect of any registered investment company for which such persons serve or act. The complaint makes no charge of any misconduct or abuse of trust, gross or otherwise, with respect to Trust Fund or its investors. No claim has been made in the complaint or otherwise that the business of Trust Fund has not been conducted efficiently or honestly or that the investors of Trust Fund have suffered any loss or damage of any kind with respect to their interest in Trust Fund by reason of any act or conduct of Service Company, or its officers or directors.

In my opinion, no dereliction or even misconduct of officers or directors of Service Company within the area of its own independent affairs falls within the reach of Section 36.[6] That the Congress clearly

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[6]The second cause of action alleges misstatements or omissions in the proxy statements distributed by Service Company to the investors of Trust Fund. Such allegations, if proved, might be violative of other sections of the Act (20a of the Act) and of

intended to so limit the reach of Section 36, as it clearly did in precise language, is evidenced by the fact that Section 36, when first considered by the Congress, applied to misconduct and abuse of trust generally.[7]

But the Congress decided to limit, as it did in the Act itself, such misconduct to obligations respecting the Trust Fund itself.[8]

In its essence, the contention of SEC appears to be that, per se, the assignment or sale at substantial profit, of a controlling stock interest in Service Company, since it works an automatic termination of the trust agreement, injured the trustors of Trust Fund and constituted "gross misconduct" or "gross abuse of trust under Section 36. But there is no warrant for such a non sequitur. The Congress did not make the assignment of agreements between Service Company and Trust Fund, a violation of the Act, thus subjecting the violator to any or all of the sanctions provided by the Act. The Congress

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the Regulations, authorized by the Act (Rule N-20A-1; 17 C.F.R. 270.20a-1) but are not reachable under Section 36.

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[7]See original bill introduced in the Senate by Senator Wagner, March 14, 1940 (S. 3580, 76th Cong., 3rd Sess.).

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[8]See Doyle v. Milton, 73 Fed. Supp. 281 at 284, 285; idem. Addison v. Holly Hill Co., 322 U.S. 607, 617.

provided a specific remedy, namely, that any such assignment worked an automatic termination, thus leaving it to the investors of Trust Fund to determine whether or not they wanted to continue on under a similar or different agreement with Service Company, differently controlled by different stock ownership therein, or contract with some other service company.

It is argued by SEC that there is something evil, amounting to gross misconduct or abuse of trust on the part of the principal owners of Service Company, arising out of the large profit in the sale of their shares and in soliciting and obtaining proxies from the investors of Trust Fund for the purpose of reinstatement of the terminated contract and thus making secure and certain the large profits referred to. And SEC says that these profits are trust funds for which the principal owners of Service Company are accountable to the investors of Trust Fund.

This argument is reminiscent of what has often been stated in many cases, where it is sought to judicially extend the purposes and reach of statutes, namely, that such arguments should be directed to the Congress. It may be, but the Court stands aloof from this consideration, that stautory provisions might or should be made with respect to such matters. The courts are not over-all supervisory agents of all the morals, equities or standards in the field regulated by the Act. We have enough to do to

apply and interpret the statutes as the Congress writes them.[9]

While the complaint sets forth two causes of action, it is clear, and indeed it is admitted, that the second cause of action stands or falls upon the validity of the first. Consequently, it is unnecessary to discuss the second cause of action.

The motion to dismiss the complaint is granted.

Present an order accordingly.

Dated November 29, 1956.

[Endorsed]: Filed November 29, 1956.

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[9]The only case cited by SEC involving the application of Sec. 36 (and indeed the only case we have been able to find) is Aldred Investment Trust vs. SEC, 151 Fed. 2d 254, Cir. 1, 1945). It has no precedential value here because it involved a clear breach of trust as to the trust fund. There the Operator of the trust fund clearly abused his trust by converting good utility securities into ownership of a race track!

United States District Court for the Southern District of California, Southern Division

Civil Action No. 35764

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

INSURANCE SECURITIES INCORPORATED, TRUST FUND SPONSORED BY INSURANCE SECURITIES INCORPORATED, ABE P. LEACH, OSSIAN E. CARR, ARTHUR J. LONERGAN, ROY A. HAIGHT, and LELAND M. KAISER as Attorney, and Proxy for Investors of Trust Fund,

Defendants.

ORDER DISMISSING AMENDED COMPLAINT

The defendants having filed a motion to dismiss the amended complaint for failure to state a claim for which relief can be granted, the plaintiff, having filed an answer thereto, and the parties having filed written briefs; and this Court having heard oral argument on November 16, 1956, and having considered said motion and answer thereto,

It Is Hereby Ordered, Adjudged and Decreed that said motion be, and it hereby is granted, and the amended complaint is hereby dismissed with

prejudice, as to each and every defendant named above.

It Is Hereby Further Ordered that the Court's Second Interlocutory Order of August 30, 1956, be and the same is hereby dissolved.

Dated December 4th, 1956.

/s/ LOUIS E. GOODMAN,
United States District Judge.

Approved as to form under Local Rule 21.

THOMAS G. MEEKER,
AARON LEVY,
F. E. KENNAMER, JR.,

By /s/ AARON LEVY,
Attorneys for Plaintiff.

[Endorsed]: Filed December 4, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the Securities and Exchange Commission, plaintiff in the above-entitled action, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the order of the District Court, entered on December 4, 1956, dismissing the amended complaint in this action and

dissolving the Second Interlocutory Order of August 30, 1956.

/s/ THOMAS G. MEEKER,
General Counsel;

/s/ AARON LEVY,
Special Counsel, Securities and Exchange Commission, Washington 25, D. C.;

/s/ F. E. KENNAMER, JR.,
Attorney, Securities and Exchange Commission, 821 Market Street, San Francisco, California.

January 22, 1957.

[Endorsed]: Filed January 24, 1957.

[Title of District Court and Cause.]

DESIGNATION OF RECORD TO BE TRANSMITTED TO THE COURT OF APPEALS

The Clerk will please transmit to the United States Court of Appeals for the Ninth Circuit the following documents as the record on appeal in this case:

1. Complaint and exhibits thereto, filed August 13, 1956.

2. Amendment to Complaint, filed August 13, 1956.

3. Interlocutory Order, dated August 14, 1956.

4. Defendants' Notice of Motion to Dismiss and to Dissolve, including the nine affidavits attached thereto, dated August 24, 1956.

5. Second Interlocutory Order, dated August 30, 1956.

6. Answer of SEC in Opposition to Defendants' Motions to Dismiss and for Summary Judgment, including affidavits and exhibits attached thereto, dated October 23, 1956.

7. Supplementary Affidavit of Roy A. Haight, verified November 12, 1956.

8. Opinion of Judge Goodman Granting Motion to Dismiss Complaint, dated November 29, 1956.

9. Order of Judge Goodman, dated December 4, 1956, Dismissing Amended Complaint, etc.

10. Notice of Appeal, filed January 24, 1957.

11. This designation.

/s/ THOMAS G. MEEKER,
General Counsel;

/s/ AARON LEVY,
Special Counsel, Securities and Exchange Commission, Washington 25, D. C.;

/s/ F. E. KENNAMER, JR.,
Attorney, Securities and Exchange Commission, 821 Market Street, San Francisco, California.

Dated January 29, 1957.

The United States District Court, Northern District of California, Southern Division

No. 35764

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

INSURANCE SECURITIES, INC., et al.,

Defendants.

REPORTER'S TRANSCRIPT

HEARING ON MOTION TO DISMISS

Friday, November 16, 1956.

Before: Hon. Louis E. Goodman, Judge.

Appearances:

For SEC:
F. E. KENNAMER, ESQ.,
AARON LEVY, ESQ.

For Defendants:
MOSES LASKY, ESQ.,
PHILIP S. EHRLICH, ESQ.,
ELWOOD MURPHEY, ESQ.,
ALFRED JARETZKI, JR., ESQ.

The Clerk: Securities and Exchange Commission versus Insurance Securities, Inc., motion to dismiss.

Will respective counsel please state their appearances for the record?

Mr. Lasky: Ror the moving defendants, Moses Lasky, Philip S. Ehrlich, Elwood Murphey and Alfred Jaretzki, Jr.

Mr. Levy: For the plaintiff, Mr. Thomas G. Meeker, Aaron Levy and F. E. Kennamer.

Mr. Lasky: If the Court pleases, the motion before the Court this morning is a motion to dismiss the complaint. In the old terminology it is a demurrer. We accept all the allegations in the complaint, although we certainly don't accept the conclusions of law, with which this complaint is replete. We take the allegations of fact and we submit that the complaint doesn't state a claim for relief.

Now, the reason I make that statement at the outset is that a considerable mass of affidavits will be found in the files; the defendants filed, I think, nine, and the plaintiffs have filed a number. The major reason why those affidavits appear in the file is that when this case started, the plaintiff, Securities and Exchange Commission, came into court ex parte and applied for certain interlocutory injunctions, and there was a hearing scheduled, and our affidavits were primarily filed in opposition. In our motion to dismiss, which we promptly filed, stated that we might rely upon those affidavits, and, of course, to the extent that we would do so, it would have [2*] to be treated as a motion for summary judgment. We had in mind at the time that there

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

were many uncontradicted objective facts; it didn't rest in the sole knowledge of any particular person, it didn't rest in a state of mind, facts which couldn't be denied and which might help to clarify. And it may be that before I finish my argument, I may refer to some of those uncontradicted objective facts.

But primarily this is a motion to dismiss. We think the issues presented by this case are purely issues of law, and I hope before I finish my presentation that your Honor will agree with our view, that the plaintiff's foundation and basic contention is about as fantastic an assertion as has ever been presented in a court. [3]

* * *

The Court: What your argument really comes down to, Mr. Lasky, is not that it requires an interpretation in the sense that you have just made it, of the provisions of the statute, but that you would first have to have an act that [39] affects the trust fund before you apply the provisions of this section.

Mr. Lasky: Yes, that is quite true; and I can word it this way. We are here talking about technical language of an act. I say the technical language of the act was never intended to cover these people in the respect of selling stock, because there wasn't any reason to.

The Court: You base that argument on the subject matter to which their acts appertain, rather than the fact that if there was an act of gross misconduct which related to the trust fund, and it was

committed by a director or officer of I.S.I., it wouldn't be reachable under this statute? [40]

* * *

The Court: If it were determined that the act that is alleged to have been committed that constituted the gross misconduct did apply to the properties of the trust fund, then I wouldn't have much difficulty in determining this statute is applicable. I think that would be a fair statement, wouldn't it?

Mr. Lasky: All right, I think that may be a fair statement. I say that neither the purposes of the statute or the specific language of the statute ever had in mind this kind of conduct, and therefore, you would have to be a little liberal with the interpretation to make it apply to the type of conduct that the act wasn't concerned with at all. [41]

* * *

So let me get back, then, to Count 1. And I want to refer at this point to the affidavits. I still take the fundamental position that taking Count 1 just on its face, accepting all its allegations of fact, it doesn't state a claim for relief. Plaintiff does not contend that there is gross abuse or any kind of abuse in the sale of the stockholder stock to outsiders in I.S.I., regardless of price, unless there has been a controlling block sold. Now, how plaintiff works in the element of controlling block as a factor in his reasoning, I am not wholly sure. But he has it there; it is an element of his case.

The Court: Wouldn't that be a factual question?

Mr. Lasky: Oh, yes, in part; and I assure your

Honor, I don't intend to ask your Honor to decide any factual questions [46] upon affidavits. But there are certain uncontradicted objective facts, and I think I can bring this to a head very quickly. The uncontradicted facts are that not a single one of these stockholders owned as much as a controlling block. The statute defines a controlling block as 25 per cent of the stock. Not a single stockholder in I.S.I. owned as much as a controlling block. There were sales in February, there were sales in May, there was one in July and September. Not a single one sold all he had to any one buyer. And if you added up everything that each seller had, he didn't have a controlling block to sell.

So the plaintiff has tried to make up for this deficiency by its allegation in Paragraph 16 of its complaint. Paragraph 16 of the complaint starts off that:

> "Upon information and belief, on or about February 1st, 1956, the director defendants either alone or in concert with others embarked upon a plan to sell their stock interests to a small number of purchasers affiliated among each other through stock ownership or otherwise." [47]

* * *

Mr. Lasky: * * * So the Plaintiff seeks to meet that with his allegation of Paragraph 16, that the plan was to sell to a small number of purchasers affiliated among each other through stock ownership or otherwise. Now, the affidavits show how many

buyers there were. I have only noted four here. I think there were seven altogether. The affidavit shows that three of the buyers were affiliated. They were what we call the "Life group." There isn't any doubt about that. And that "Life group" got 14 and a fraction per cent of the stock—which is not a control. It is not a controlling block. The affidavits show who the other buyers were. They were a series of individuals. And the affidavits of the buyers—and I am not going to refer to the affidavit of Mr. Kaiser, who was the intermediary here, I am just taking that of the buyers, who are not [48] defendants in the case—state that they are not affiliated with each other. Now, it is obvious that they are not affiliated by stock. And so this allegation of the complaint that the buyers were affiliated with each other through stock ownership is an objective fact which is shown to be untrue.

* * *

The Court: I don't see how you can reach that question on a motion to dismiss, though, because it may be that one side would say, "Well, I am not bound by the affidavit of the man who says he didn't act. Maybe I can prove it otherwise—that he didn't act in concert with someone else." It is a very difficult thing to reach that sort of a question on a motion to dismiss or even on motion for summary judgment.

Mr. Lasky: Certainly not on a straight motion to dismiss. And I have accepted counsel's contention that you couldn't act upon the affidavit of a defend-

ant, and so I am ignoring all those affidavits. I merely say that here we had these buyers, who are not defendants in the case, and when each [49] one files an affidavit and says, "Well, I had no agreement with the other buyers," that is an objective fact. However, if your Honor feels that that's an issue that we can't get into at this time, I say again, I don't want to get this case at this time fouled up in procedural dots. And so we will just come back, and I will submit the matter upon the assumption of the complaint that we had a controlling block of stock sold by a group to another group affiliated.

But there is one set of facts in the affidavits which your Honor can act on, because it doesn't depend upon anybody's state of mind and doesn't depend upon anybody's oral testimony. [50]

* * *

Mr. Levy: * * * Now that brings me, then, to the question of the second cause of action. Now, as I said before, the second cause of action is tied in with the first cause of action. If there is a gross abuse of trust and the directors are subject to the sanctions under Section 36, then we say that the proxy statement was false and misleading in several respects. [114]

* * *

The Court: You don't set that up, though, as an independent cause of action.

Mr. Levy: No; your Honor, I do not. But what I say is this, that if there is a section 36, then I say in the light of Section 36, the proxy statement

is incomplete and false and misleading in several respects. While it is true that conceivably the Commission could have said and might have said in a particular case that these matters should have been disclosed regardless of what the consequences of the transaction are with respect to 36, we do not choose in this case to allege it that way, merely as a matter of discretion, as to what the Commission wants to charge here.

The Court: Well, if it were held that this was not an act of gross misconduct in making this transaction, then the statement of the circumstances in the proxy statement would become immaterial? Or would it still be material?

Mr. Levy: Well, as we reframed this complaint, your Honor, the two must stand together or fall together, that is correct.

* * *

[Endorsed]: Filed February 4, 1957. [117]

[Title of District Court and Cause.]

EXCERPT FROM DOCKET ENTRIES

1956

Aug. 13—Filed complaint—no summons at request of attorney.

* * *

Aug. 13—Filed amended complaint.

1956

Aug. 13—Ordered after ex parte hearing motion for restraining order and preliminary injunction continued to Aug. 14, 1956, at 11:00 a.m. (Goodman.)

Aug. 14—Ordered after hearing interlocutory order entered on stipulation of counsel and application for preliminary injunction continued to Sept. 7, 1956. (Goodman.)

Aug. 14—3:30 p.m. filed interlocutory order vs. defendants from voting proxies received from voters with respect to proposed reinstatement of Investment Advisory Contract; proposed reinstatement of Principal Underwriting Contract and Election of Abe P. Leach and Roy A. Haight as members of board of directors pending further order of Court. Application for preliminary injunction continued to Sept. 7, 1956, at 10:00 a.m., all without prejudice to any other relief to which parties may be entitled. (Goodman.)

Aug. 15—Filed stip. and order extending time for defts. to plead to Aug. 24, 1956, and pltff. to Sept. 5, 1956, to serve responsive pleadings. Defts. 30 days following order of Court on motion for preliminary injunction to plead to complaint. (Goodman.)

* * *

Aug. 21—Filed request of defendants for admissions by plaintiff.

1956

Aug. 24—Filed notice by Ins. Sec. Inc., Leach, Carr, Lonergan, Haight and Kaiser of motion to dismiss, Sept. 7, 1956.

Aug. 24—Filed affidavit of Leland M. Kaiser, Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight, D. D. Harrington, John D. Murchison, S. W. Richardson, Perry R. Bass in support of motion to dismiss.

* * *

Aug. 29—Filed answer of plaintiff to request for admissions.

Aug. 30—11:30 a.m. filed second interlocutory order withdrawing order of Aug. 14, 1956, subject to following conditions: pending final determination proxies of investors shall not be voted; Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan and Roy A. Haight shall not serve as directors of Trust Fund pending final determination; dividends on any stock owned by said defendants shall be segregated and withheld by Ins. Sec. Inc.; said defendants shall not sell their remaining stock in Ins. Sec. Inc., all without prejudice to jurisdiction of Court to grant any and all relief. Motion of deft. to dismiss continued to Nov. 2, 1956, at 10:00 a.m. (Goodman.)

Oct. 1—Ordered, motion to dismiss Cont'd to Nov. 16, 1956. (Goodman.)

1956

Oct. 24—Filed answer of SEC in opposition to motion of defendants to dismiss and for summary judgment.

Oct. 29—Filed interrogatories by defendants to plaintiff.

* * *

Nov. 8—Filed notice by plaintiff of taking deposition of Leland M. Kaiser.

Nov. 9—Filed notice by defendants of motion to defer deposition, Nov. 13, 1956, with order shortening time for service. (Goodman.)

Nov. 9—Ordered motion to defer taking deposition assigned for hearing Nov. 13, 1956, at 9:30 a.m. (Goodman.)

* * *

Nov. 13—Ordered after hearing, motion to defer taking depositions continued to Nov. 19, 1956. (Goodman.)

Nov. 13—Filed answer of SEC to interrogs. by deft.

Nov. 16—Hearing on motion to dismiss and to defer taking depositions. Arguments heard and motion to dismiss submitted. Motion to defer taking depositions continued until further order of Court. (Goodman.)

Nov. 29—Filed opinion of Court on motion to dismiss (motion of deft. granted). Counsel to prepare order accordingly. (Goodman.)

* * *

Dec. 4—Filed order dismissing amended complaint with prejudice. (Goodman.)

1957

Jan. 24—Filed notice of appeal by plaintiff.

* * *

Jan. 31—Filed appellant's designation of record on appeal.

Feb. 1—Filed appellee's designation of record on appeal.

* * *

Feb. 4—Filed reporter's transcript of proceedings Nov. 16, 1956.

* * *

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and constitute the record on appeal herein as designated by the Attorneys for appellant and appellees:

Excerpt from Docket Entries.
Complaint.
Amendment to Complaint.
Interlocutory Order.
Request by Defendants for Admissions of Fact.
Notice and Motion by Defendants to Dismiss and to Dissolve, with nine Supporting Affidavits.

Reply of Plaintiff to Defendants' Request for Admissions of Fact.

Minute Order of October 1, 1956.

Second Interlocutory Order.

Answer of Plaintiff in Opposition to Defendants' Motion to Dismiss and for Summary Judgment.

Supplementary Affidavit of Roy A. Haight on Behalf of Defendants.

Minute Order of November 16, 1956.

Opinion of the Court on Motion to Dismiss.

Order Dismissing Amended Complaint.

Notice of Appeal by Plaintiff.

Appellant's Designation of Record on Appeal.

Appellees' Designation of Record on Appeal.

Reporter's Transcript of Proceedings of November 16, 1956.

In Witness Whereof I have hereunto set my hand and affixed the seal of said District Court this 28th day of February, 1957.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ MARGARET BLAIR,
Deputy Clerk.

[Endorsed]: No. 15457. United States Court of Appeals for the Ninth Circuit. Securities and Exchange Commission, Appellant, vs. Insurance Securities Incorporated, Trust Fund Sponsored by Insurance Securities Incorporated, Abe P. Leach, Ossian E. Carr, Arthur J. Lonergan, Roy A. Haight and Leland M. Kaiser, as Attorney and Proxy for Investors of Trust Fund, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed February 28, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 15457

SECURITIES AND EXCHANGE COMMISSION,

Appellant,

vs.

INSURANCE SECURITIES INCORPORATED, TRUST FUND SPONSORED BY INSURANCE SECURITIES, INCORPORATED, ABE P. LEACH, OSSIAN E. CARR, ARTHUR J. LONERGAN, ROY A. HAIGHT and LELAND M. KAISER as Attorney, and Proxy for Investors of Trust Fund,

Appellees.

APPELLANT'S STATEMENT OF POINTS

I.

Pursuant to Rule 17 (6) of the Rules of this Court, the Securities and Exchange Commission, appellant herein, hereby designates the following as a statement of points on which it intends to rely:

1. The District Court erred in dismissing the amended complaint for failure to state a cause of action under Section 36 of the Investment Company Act of 1940 ("the Act").

2. The District Court erred in determining that the sale of a controlling stock interest in Insurance

Securities Incorporated, on the facts and circumstances herein involved, does not constitute gross misconduct or gross abuse of trust under Section 36 of the Act.

3. The District Court erred in determining that the sale of a controlling stock interest in Insurance Securities Incorporated, on the facts and circumstances herein involved, does not constitute gross misconduct or gross abuse of trust under Section 36 of the Act, "in respect of" the Trust Fund, a registered investment company.

4. The District Court erred in determining that the sale of a controlling stock interest in Insurance Securities Incorporated, on the facts and circumstances here involved, does not contravene the statutory policies as set forth in Section 15 and other sections of the Act, and the obligations which the defendants, as fiduciaries, owed to the Trust Fund.

5. The District Court erred in determining that the statutory provisions regarding the termination of the principal underwriting and investment advisory contracts between the Trust Fund and Insurance Securities Incorporated constitute a limitation upon the scope and reach of Section 36 of the Act and applicable equitable principles.

6. The District Court erred in not deciding that Insurance Securities Incorporated and the individual defendants named in the complaint are persons within the reach of Section 36 of the Act.

7. The District Court erred in not deciding that the amended complaint herein states a cause of ac-

tion under Rule X-14A-9 of the Proxy Rules promulgated by the Securities and Exchange Commission and applicable to proxy solicitations with respect to the Trust Fund, a registered investment company.

/s/ THOMAS G. MEEKER,
General Counsel;

/s/ AARON LEVY, O.E.P.
Special Counsel;

/s/ F. E. KENNAMER, JR.,
Attorney, Securities and
Exchange Commission.

Dated: February 28, 1957.

[Endorsed]: Filed March 1, 1957.